

AMENDED IN ASSEMBLY APRIL 26, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 3076

**Introduced by Committee on Revenue and Taxation (Klehs
(Chair), Canciamilla, Chu, and Jones)**

March 23, 2006

~~An act to amend Sections 6360.1, 7659.9, 8106, 8760, 9271, 30190, 30459.1, 32260, 32471, 40067, 40211, 41060, 41171, 43170, 43522, 45160, 45867, 46160, 46622, 50112.7, 50156.11, 55050, 55332, 60063, 60101, 60201.3, 60250, An act to amend Sections 6360.1, 8106, 9271, 30459.1, 32471, 40211, 41171, 43522, 45867, 46622, 50156.11, 55332, 60063, 60101, 60201.3, 60604, 60606, and 60636~~ of, to add Sections 9152.2, 30178.3, 30459.15, 32402.2, 32471.5, 38800, 40112.2, 40211.5, 41101.2, 41171.5, 43452.2, 43522.5, 45652.2, 45867.5, 46502.2, 46628, 50140.2, 55222.2, 55332.5, 60522.2, and 60637 to, and to repeal Sections 8106.1, 8106.5, 8106.8, 60045, and 60046 of, the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

AB 3076, as amended, Committee on Revenue and Taxation. Taxation.

(1) The Sales and Use Tax Law imposes a tax on the gross receipts from the sale in this state of, or the storage, use, or other consumption in this state of, tangible personal property. That law provides various exemptions from that tax, including an exemption for symbolic, impermanent ~~label~~ lapel pins that memorialize United States military veterans killed in foreign wars, as provided.

This bill would correct an obsolete cross reference in this provision.

~~(2) The Motor Vehicle Fuel License Tax Law, the Use Fuel Tax Law, the Cigarette and Tobacco Products Tax Law, the Alcoholic Beverage Tax Law, the Energy Resources Surcharge Law, the Emergency Telephone Users Surcharge Law, the Hazardous Substances Tax Law, the Integrated Waste Management Fee Law, the Oil Spill Response, Prevention, and Administration Fees Law, the Underground Storage Tank Maintenance Fee Law, the Fee Collection Procedures Law, and the Diesel Fuel Tax Law provide that any person whose estimated tax or fee liability under those laws averages \$20,000 or more per month remit amounts due by electronic funds transfer, as provided. Under these laws any person whose estimated tax or fee liability averages less than \$20,000 per month may elect to remit amounts due by electronic funds transfer.~~

~~This bill would lower the threshold monthly liability amount and require any person whose estimated monthly tax or fee liability averages \$10,000 or more remit amounts due by electronic funds transfer, as provided. This bill would also allow any person whose estimated monthly tax or fee liability averages less than \$10,000 to elect to remit amounts due by electronic funds transfer.~~

~~(3)~~

(2) The Motor Vehicle Fuel License Tax Law allows a supplier, as defined, to claim a refund of the license tax paid for the motor vehicle fuel under specific circumstances, including, but not limited to, where the supplier buys and uses the fuel for purposes other than operating motor vehicles upon the public highways of the state, exports the fuel, sells the fuel to a consulate officer or employee, or delivers the tax-paid fuel to a terminal and removes the fuel from the terminal, as provided. Under this law, a supplier entitled to a refund may elect to take a credit in lieu of a refund where the fuel was purchased for use off highway, exported, sold to a consulate officer or employee, or delivered and removed from a terminal, as specified.

This bill would consolidate the procedures for a supplier who chooses to claim a credit in lieu of a refund where the supplier exported, removed, sold or used the tax-paid motor vehicle fuel, as provided.

~~(4)~~

(3) The Use Fuel Tax Law, the Cigarette and Tobacco Products Tax Law, the Alcoholic Beverage Tax Law, the Energy Resources Surcharge Law, the Emergency Telephone Users Surcharge Law, the Hazardous Substances Tax Law, the Integrated Waste Management

Fee Law, the Oil Spill Response, Prevention, and Administration Fees Law, the Underground Storage Tank Maintenance Fee Law, the Fee Collection Procedures Law, and the Diesel Fuel Tax Law establish specified limitation periods for the approval by the State Board of Equalization for any refund for an overpayment.

This bill would provide that, notwithstanding those provisions, a refund of an overpayment of any tax, penalty, or interest collected by the board by means of a levy or by other enforcement procedures, shall be approved if the claim is filed within 3 years of the date of the overpayment.

(5)

(4) The State Board of Equalization, as part of its administrative functions, is authorized to enter into settlement agreements for civil tax, or fee, or surcharge liability if it is determined that the settlement amount is consistent with a reasonable evaluation of the costs and risks associated with litigation, as provided. Existing law requires that whenever a reduction in tax, or fee, or surcharge in excess of \$500 is approved by the State Board of Equalization and the Franchise Tax Board, a public record containing specified information with regard to the settlement shall be placed on file in the office of the executive officer.

This bill would authorize the executive director and the chief counsel of the board to approve jointly the settlement of any tax, or fee, or surcharge matter in dispute involving a reduction of tax, or fee, or surcharge or penalties in settlement of \$5,000 or less. This bill would require that whenever a reduction of tax, or fee, or surcharge or penalties, or total tax, or fee, or surcharge and penalties in excess of \$500 is approved, a public record be kept at the executive director's office, as provided. This bill would also conform and clarify public record requirements.

(6)

(5) Existing law provides that the State Board of Equalization administer the Cigarette and Tobacco Products Tax Law, the Alcoholic Beverage Tax Law, the Timber Yield Tax Law, the Energy Resources Surcharge Law, the Emergency Telephone Users Surcharge Law, the Hazardous Substances Tax Law, the Integrated Waste Management Fee Law, the Oil Spill Response, Prevention, and Administration Fees Law, the Fee Collection Procedures Law, and the Diesel Fuel Tax Law. Under these laws, when a liability is not paid

when due, the board is authorized to use various procedures to collect the amounts due.

This bill would authorize the board to accept offers in compromise on a final tax, surcharge, or fee liability, as defined, under the various fee, surcharge, and tax programs, as provided. This bill would require a taxpayer, fee payer, or a surcharge payer, under specified circumstances, to file a statement under penalty of perjury and would additionally provide that; the willful concealment or withholding of information, as specified, in connection with an offer of compromise is a felony, and *would* thereby ~~imposes~~ *impose* a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~(7)~~

(6) The Diesel Fuel Tax Law prohibits any person from operating or maintaining a motor vehicle on the public highway with dyed diesel fuel, except if dyed diesel fuel is used in a manner that is lawful under the federal Internal Revenue Code by a person who is registered in a specific capacity under the Diesel Fuel Tax Law, including an intercity bus operator, as provided.

This bill would remove that exception.

~~(8)~~

(7) The Diesel Fuel Tax Law imposes specified taxes with respect to diesel fuel and authorizes one taxpayer to pay another taxpayer's tax liability on fuel removed from the terminal rack, operative only if authorized by the IRS.

This bill would make technical, nonsubstantive changes to those provisions.

~~(9)~~

(8) Under the existing Diesel Fuel Tax Law, a customer who has failed to pay for diesel fuel when the supplier of the diesel fuel has been allowed a credit on the fuel, as specified, is liable for the fuel tax as an unlicensed supplier, as provided. Existing law further provides that the tax, penalties, and interest owed by the unlicensed supplier become immediately due and payable.

This bill would require the board to give the customer notice of the determination of tax liability within 3 years after the date the credit was taken or the date on which a refund was paid.

(10)

(9) The existing Diesel Fuel Tax Law requires specified persons that are involved in the sale, removal, transportation, or storage of diesel fuel to keep and maintain specified records, including highway vehicle operator/refuelers.

This bill would change this reference to highway vehicle operator/fuelers to conform with existing provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 6360.1 of the Revenue and Taxation
2 Code is amended to read:

3 6360.1. There are exempted from the taxes imposed by this
4 part, the gross receipts from the sale in this state of, and the
5 storage, use, or other consumption in this state of, a “Buddy
6 Poppy” or any other symbolic, impermanent lapel pin that
7 memorializes United States military veterans killed in foreign
8 wars of the United States, by any corporation established by the
9 Congress of the United States pursuant to Chapter 2301
10 (commencing with Section 23101) of Title 36 of the United
11 States Code, or any of that corporation’s subordinate state or
12 territorial subdivisions, local chapters, posts, or auxiliaries.

13 ~~SEC. 2. Section 7659.9 of the Revenue and Taxation Code is~~
14 ~~amended to read:~~

15 ~~7659.9. (a) Any person whose estimated tax liability under~~
16 ~~this part averages ten thousand dollars (\$10,000) or more per~~
17 ~~month, as determined by the board pursuant to methods of~~
18 ~~calculation prescribed by the board, shall remit amounts due by~~
19 ~~an electronic funds transfer under procedures prescribed by the~~
20 ~~board.~~

21 ~~(b) Any person whose estimated tax liability under this part~~
22 ~~averages less than ten thousand dollars (\$10,000) per month may~~
23 ~~elect to remit amounts due by electronic funds transfer with the~~
24 ~~approval of the board.~~

~~(e) Any person remitting amounts due pursuant to subdivision (a) or (b) shall perform an electronic funds transfer in compliance with the due dates set forth in Article 1 (commencing with Section 7651) and Article 1.1 (commencing with Section 7659). Payment is deemed complete on the date the electronic funds transfer is initiated, if settlement to the state's demand account occurs on or before the banking day following the date the transfer is initiated. If settlement to the state's demand account does not occur on or before the banking day following the date the transfer is initiated, payment is deemed to occur on the date settlement occurs.~~

~~(d) Any person remitting taxes by electronic funds transfer shall, on or before the due date of the remittance, file a return for the preceding reporting period in the form and manner prescribed by the board. Any person who fails to timely file the required return shall pay a penalty of 10 percent of the amount of taxes, exclusive of prepayments, with respect to the period for which the return is required.~~

~~(e) (1) Except as provided in paragraph (2), any person required to remit taxes pursuant to this article who remits those taxes by means other than appropriate electronic funds transfer shall pay a penalty of 10 percent of the taxes incorrectly remitted.~~

~~(2) A person required to remit prepayments pursuant to this article who remits a prepayment by means other than an appropriate electronic funds transfer shall pay a penalty of 6 percent of the prepayment incorrectly remitted.~~

~~(f) Except as provided by Sections 7659.5 and 7659.6, any person who fails to pay any tax to the state or any amount of tax required to be paid to the state, except amounts of determinations made by the board under Article 2 (commencing with Section 7660) or Article 2.5 (commencing with Section 7670), within the time required shall pay a penalty of 10 percent of the tax or amount of tax, in addition to the tax or amount of tax, plus interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date on which the tax or the amount of tax required to be paid became due and payable to the state until the date of payment.~~

~~(g) In determining whether a person's estimated tax liability averages ten thousand dollars (\$10,000) or more per month, the~~

1 board may consider tax returns filed pursuant to this part and any
2 other information in the board's possession.

3 (h) ~~Except as provided in subdivision (i), the penalties~~
4 ~~imposed by subdivisions (d), (e), and (f) shall be limited to a~~
5 ~~maximum of 10 percent of the taxes due, exclusive of~~
6 ~~prepayments, for any one return. Any person remitting taxes by~~
7 ~~electronic funds transfer shall be subject to the penalties under~~
8 ~~this section and not Section 7655.~~

9 (i) ~~The penalties imposed with respect to paragraph (2) of~~
10 ~~subdivision (e) and Sections 7659.5 and 7659.6 shall be limited~~
11 ~~to a maximum of 6 percent of the prepayment amount.~~

12 (j) ~~The board shall promulgate regulations pursuant to Chapter~~
13 ~~3.5 (commencing with Section 11340) of Part 1 of Division 3 of~~
14 ~~Title 2 of the Government Code for purposes of implementing~~
15 ~~this section.~~

16 ~~SEC. 3.~~

17 *SEC. 2.* Section 8106 of the Revenue and Taxation Code is
18 amended to read:

19 8106. In lieu of the collection and refund of the tax on
20 tax-paid motor vehicle fuel exported, removed, sold, or used by a
21 supplier in a manner that would entitle the supplier to claim a
22 refund under Section 8101, credit may be given the supplier upon
23 the supplier's tax return, and the determination of the amount of
24 tax shall be determined in accordance with any rules and
25 regulations the board may prescribe.

26 ~~SEC. 4.~~

27 *SEC. 3.* Section 8106.1 of the Revenue and Taxation Code is
28 repealed.

29 ~~SEC. 5.~~

30 *SEC. 4.* Section 8106.5 of the Revenue and Taxation Code is
31 repealed.

32 ~~SEC. 6.~~

33 *SEC. 5.* Section 8106.8 of the Revenue and Taxation Code is
34 repealed.

35 ~~SEC. 7.~~ Section 8760 of the Revenue and Taxation Code is
36 amended to read:

37 8760. (a) ~~Any person whose estimated tax liability under this~~
38 ~~part averages ten thousand dollars (\$10,000) or more per month,~~
39 ~~as determined by the board pursuant to methods of calculation~~

1 prescribed by the board, shall remit amounts due by an electronic
2 funds transfer under procedures prescribed by the board.

3 (b) Any person whose estimated tax liability under this part
4 averages less than ten thousand dollars (\$10,000) per month may
5 elect to remit amounts due by electronic funds transfer with the
6 approval of the board.

7 (c) Any person remitting amounts due pursuant to subdivision
8 (a) or (b) shall perform electronic funds transfer in compliance
9 with the due dates set forth in Article 1 (commencing with
10 Section 8751). Payment is deemed complete on the date the
11 electronic funds transfer is initiated, if settlement to the state's
12 demand account occurs on or before the banking day following
13 the date the transfer is initiated. If settlement to the state's
14 demand account does not occur on or before the banking day
15 following the date the transfer is initiated, payment is deemed to
16 occur on the date settlement occurs.

17 (d) Any person remitting taxes by electronic funds transfer
18 shall, on or before the due date of the remittance, file a return for
19 the preceding reporting period in the form and manner prescribed
20 by the board. Any person who fails to timely file the required
21 return shall pay a penalty of 10 percent of the amount of taxes
22 with respect to the period for which the return is required.

23 (e) Any person required to remit taxes pursuant to this article
24 who remits those taxes by means other than appropriate
25 electronic funds transfer shall pay a penalty of 10 percent of the
26 taxes incorrectly remitted.

27 (f) Any person who fails to pay any tax to the state or any
28 amount of tax required to be collected and paid to the state,
29 except amounts of determinations made by the board under
30 Article 2 (commencing with Section 8776) or Article 3
31 (commencing with Section 8801), within the time required shall
32 pay a penalty of 10 percent of the tax or amount of tax, in
33 addition to the tax or amount of tax, plus interest at the modified
34 adjusted rate per month, or fraction thereof, established pursuant
35 to Section 6591.5, from the date on which the tax became due
36 and payable to the state until the date of payment.

37 (g) In determining whether a person's estimated tax liability
38 averages ten thousand dollars (\$10,000) or more per month, the
39 board may consider tax returns filed pursuant to this part and any
40 other information in the board's possession.

1 ~~(h) The penalties imposed by subdivisions (d), (e), and (f)~~
2 ~~shall be limited to a maximum of 10 percent of the taxes due for~~
3 ~~any one return. Any person remitting taxes by electronic funds~~
4 ~~transfer shall be subject to the penalties under this section and not~~
5 ~~Section 8876.~~

6 ~~(i) The board shall promulgate regulations pursuant to Chapter~~
7 ~~3.5 (commencing with Section 11340) of Part 1 of Division 3 of~~
8 ~~Title 2 of the Government Code for purposes of implementing~~
9 ~~this section.~~

10 ~~SEC. 8.~~

11 ~~SEC. 6.~~ Section 9152.2 is added to the Revenue and Taxation
12 Code, to read:

13 9152.2. Notwithstanding Section 9152, a refund of an
14 overpayment of any tax, penalty, or interest collected by the
15 board by means of levy, through the use of liens, or by other
16 enforcement procedures, shall be approved if a claim for a refund
17 is filed within three years of the date of an overpayment.

18 ~~SEC. 9.~~

19 ~~SEC. 7.~~ Section 9271 of the Revenue and Taxation Code is
20 amended to read:

21 9271. (a) It is the intent of the Legislature that the State
22 Board of Equalization, its staff, and the Attorney General pursue
23 settlements as authorized under this section with respect to civil
24 tax matters in dispute that are the subject of protests, appeals, or
25 refund claims, consistent with a reasonable evaluation of the
26 costs and risks associated with litigation of these matters.

27 (b) (1) Except as provided in paragraph (3) and subject to
28 paragraph (2), the executive director or chief counsel, if
29 authorized by the executive director, of the board may
30 recommend to the State Board of Equalization, itself, a
31 settlement of any civil tax matter in dispute.

32 (2) No recommendation of settlement shall be submitted to the
33 board, itself, unless and until that recommendation has been
34 submitted by the executive director or chief counsel to the
35 Attorney General. Within 30 days of receiving that
36 recommendation, the Attorney General shall review the
37 recommendation and advise, in writing, the executive director or
38 chief counsel of the board of his or her conclusions as to whether
39 the recommendation is reasonable from an overall perspective.

40 The executive director or chief counsel shall, with each

1 recommendation of settlement submitted to the board, itself, also
2 submit the Attorney General's written conclusions obtained
3 pursuant to this paragraph.

4 (3) A settlement of any civil tax matter in dispute involving a
5 reduction of tax or penalties in settlement, the total of which
6 reduction of tax and penalties in settlement does not exceed five
7 thousand dollars (\$5,000), may be approved by the executive
8 director and chief counsel, jointly. The executive director shall
9 notify the board, itself, of any settlement approved pursuant to
10 this paragraph.

11 (c) Whenever a reduction of tax, or penalties, or total tax and
12 penalties in settlement in excess of five hundred dollars (\$500) is
13 approved pursuant to this section, there shall be placed on file,
14 for at least one year, in the office of the executive director of the
15 board a public record with respect to that settlement. The public
16 record shall include all of the following information:

17 (1) The name or names of the taxpayers who are parties to the
18 settlement.

19 (2) The total amount in dispute.

20 (3) The amount agreed to pursuant to the settlement.

21 (4) A summary of the reasons why the settlement is in the best
22 interests of the State of California.

23 (5) For any settlement approved by the board, itself, the
24 Attorney General's conclusion as to whether the recommendation
25 of settlement was reasonable from an overall perspective.

26 The public record shall not include any information that relates
27 to any trade secret, patent, process, style of work, apparatus,
28 business secret, or organizational structure that, if disclosed,
29 would adversely affect the taxpayer or the national defense.

30 (d) The members of the State Board of Equalization shall not
31 participate in the settlement of tax matters pursuant to this
32 section, except as provided in subdivision (e).

33 (e) (1) Any recommendation for settlement shall be approved
34 or disapproved by the board, itself, within 45 days of the
35 submission of that recommendation to the board. Any
36 recommendation for settlement that is not either approved or
37 disapproved by the board, itself, within 45 days of the
38 submission of that recommendation shall be deemed approved.
39 Upon approval of a recommendation for settlement, the matter

1 shall be referred back to the executive director or chief counsel in
2 accordance with the decision of the board.

3 (2) Disapproval of a recommendation for settlement shall be
4 made only by a majority vote of the board. Where the board
5 disapproves a recommendation for settlement, the matter shall be
6 remanded to board staff for further negotiation, and may be
7 resubmitted to the board, in the same manner and subject to the
8 same requirements as the initial submission, at the discretion of
9 the executive director or chief counsel.

10 (f) All settlements entered into pursuant to this section shall be
11 final and nonappealable, except upon a showing of fraud or
12 misrepresentation with respect to a material fact.

13 (g) Any proceedings undertaken by the board itself pursuant to
14 a settlement as described in this section shall be conducted in a
15 closed session or sessions. Except as provided in subdivision (c),
16 any settlement considered or entered into pursuant to this section
17 shall constitute confidential tax information for purposes of
18 Section 9255.

19 (h) This section shall apply only to civil tax matters in dispute
20 on or after the effective date of the act adding this subdivision.

21 (i) The Legislature finds that it is essential for fiscal purposes
22 that the settlement program authorized by this section be
23 expeditiously implemented. Accordingly, Chapter 3.5
24 (commencing with Section 11340) of Part 1 of Division 3 of Title
25 2 of the Government Code shall not apply to any determination,
26 rule, notice, or guideline established or issued by the board in
27 implementing and administering the settlement program
28 authorized by this section.

29 ~~SEC. 10.~~

30 *SEC. 8.* Section 30178.3 is added to the Revenue and
31 Taxation Code, to read:

32 30178.3. Notwithstanding Section 30178, a refund of an
33 overpayment of any tax, penalty, or interest collected by the
34 board by means of levy, through the use of liens, or by other
35 enforcement procedures, shall be approved if a claim for a refund
36 is filed within three years of the date of an overpayment.

37 ~~SEC. 11. Section 30190 of the Revenue and Taxation Code is~~
38 ~~amended to read:~~

39 ~~30190. (a) Any person whose estimated tax liability under~~
40 ~~this part averages ten thousand dollars (\$10,000) or more per~~

1 month, as determined by the board pursuant to methods of
2 calculation prescribed by the board, shall remit amounts due by
3 an electronic funds transfer under procedures prescribed by the
4 board.

5 (b) Any person whose estimated tax liability under this part
6 averages less than ten thousand dollars (\$10,000) per month may
7 elect to remit amounts due by electronic funds transfer with the
8 approval of the board.

9 (c) Any person remitting amounts due pursuant to subdivision
10 (a) or (b) shall perform electronic funds transfer in compliance
11 with the due dates set forth in Article 1 (commencing with
12 Section 30181). Payment is deemed complete on the date the
13 electronic funds transfer is initiated, if settlement to the state's
14 demand account occurs on or before the banking day following
15 the date the transfer is initiated. If settlement to the state's
16 demand account does not occur on or before the banking day
17 following the date the transfer is initiated, payment is deemed to
18 occur on the date settlement occurs.

19 (d) Any person remitting taxes by electronic funds transfer
20 shall, on or before the due date of the remittance, file a return for
21 the preceding reporting period in the form and manner prescribed
22 by the board. Any person who fails to timely file the required
23 return shall pay a penalty of 10 percent of the amount of taxes
24 with respect to the period for which the return is required.

25 (e) Any person required to remit taxes pursuant to this article
26 who remits those taxes by means other than appropriate
27 electronic funds transfer shall pay a penalty of 10 percent of the
28 taxes incorrectly remitted.

29 (f) Any person who fails to pay any tax to the state or any
30 amount of tax required to be collected and paid to the state,
31 except amounts of determinations made by the board under
32 Article 3 (commencing with Section 30173) or Article 2
33 (commencing with Section 30201) or Article 3 (commencing
34 with Section 30221), within the time required shall pay a penalty
35 of 10 percent of the tax or amount of tax, in addition to the tax or
36 amount of tax, plus interest at the modified adjusted rate per
37 month, or fraction thereof, established pursuant to Section
38 6591.5, from the date on which the tax became due and payable
39 to the state until the date of payment.

1 ~~(g) In determining whether a person's estimated tax liability~~
2 ~~averages ten thousand dollars (\$10,000) or more per month, the~~
3 ~~board may consider tax returns filed pursuant to this part and any~~
4 ~~other information in the board's possession.~~

5 ~~(h) The penalties imposed by subdivisions (d), (e), and (f)~~
6 ~~shall be limited to a maximum of 10 percent of the taxes due for~~
7 ~~any one return. Any person remitting taxes by electronic funds~~
8 ~~transfer shall be subject to the penalties under this section and not~~
9 ~~Section 30281.~~

10 ~~(i) The board shall promulgate regulations pursuant to Chapter~~
11 ~~3.5 (commencing with Section 11340) of Part 1 of Division 3 of~~
12 ~~Title 2 of the Government Code for purposes of implementing~~
13 ~~this section.~~

14 ~~SEC. 12.~~

15 ~~SEC. 9.~~ Section 30459.1 of the Revenue and Taxation Code is
16 amended to read:

17 30459.1. (a) It is the intent of the Legislature that the State
18 Board of Equalization, its staff, and the Attorney General pursue
19 settlements as authorized under this section with respect to civil
20 tax matters in dispute that are the subject of protests, appeals, or
21 refund claims, consistent with a reasonable evaluation of the
22 costs and risks associated with litigation of these matters.

23 (b) (1) Except as provided in paragraph (3) and subject to
24 paragraph (2), the executive director or chief counsel, if
25 authorized by the executive director, of the board may
26 recommend to the State Board of Equalization, itself, a
27 settlement of any civil tax matter in dispute.

28 (2) No recommendation of settlement shall be submitted to the
29 board, itself, unless and until that recommendation has been
30 submitted by the executive director or chief counsel to the
31 Attorney General. Within 30 days of receiving that
32 recommendation, the Attorney General shall review the
33 recommendation and advise, in writing, the executive director or
34 chief counsel of the board of his or her conclusions as to whether
35 the recommendation is reasonable from an overall perspective.
36 The executive director or chief counsel shall, with each
37 recommendation of settlement submitted to the board, itself, also
38 submit the Attorney General's written conclusions obtained
39 pursuant to this paragraph.

(3) A settlement of any civil tax matter in dispute involving a reduction of tax or penalties in settlement, the total of which reduction of tax and penalties in settlement does not exceed five thousand dollars (\$5,000), may be approved by the executive director and chief counsel, jointly. The executive director shall notify the board, itself, of any settlement approved pursuant to this paragraph.

(c) Whenever a reduction of tax, or penalties, or total tax and penalties in settlement in excess of five hundred dollars (\$500) is approved pursuant to this section, there shall be placed on file, for at least one year, in the office of the executive director of the board a public record with respect to that settlement. The public record shall include all of the following information:

(1) The name or names of the taxpayers who are parties to the settlement.

(2) The total amount in dispute.

(3) The amount agreed to pursuant to the settlement.

(4) A summary of the reasons why the settlement is in the best interests of the State of California.

(5) For any settlement approved by the board, itself, the Attorney General's conclusion as to whether the recommendation of settlement was reasonable from an overall perspective.

The public record shall not include any information that relates to any trade secret, patent, process, style of work, apparatus, business secret, or organizational structure that, if disclosed, would adversely affect the taxpayer or the national defense.

(d) The members of the State Board of Equalization shall not participate in the settlement of tax matters pursuant to this section, except as provided in subdivision (e).

(e) (1) Any recommendation for settlement shall be approved or disapproved by the board, itself, within 45 days of the submission of that recommendation to the board. Any recommendation for settlement that is not either approved or disapproved by the board, itself, within 45 days of the submission of that recommendation shall be deemed approved. Upon approval of a recommendation for settlement, the matter shall be referred back to the executive director or chief counsel in accordance with the decision of the board.

(2) Disapproval of a recommendation for settlement shall be made only by a majority vote of the board. Where the board

1 disapproves a recommendation for settlement, the matter shall be
2 remanded to board staff for further negotiation, and may be
3 resubmitted to the board, in the same manner and subject to the
4 same requirements as the initial submission, at the discretion of
5 the executive director or chief counsel.

6 (f) All settlements entered into pursuant to this section shall be
7 final and nonappealable, except upon a showing of fraud or
8 misrepresentation with respect to a material fact.

9 (g) Any proceedings undertaken by the board itself pursuant to
10 a settlement as described in this section shall be conducted in a
11 closed session or sessions. Except as provided in subdivision (c),
12 any settlement considered or entered into pursuant to this section
13 shall constitute confidential tax information for purposes of
14 Section 30455.

15 (h) This section shall apply only to civil tax matters in dispute
16 on or after the effective date of the act adding this subdivision.

17 (i) The Legislature finds that it is essential for fiscal purposes
18 that the settlement program authorized by this section be
19 expeditiously implemented. Accordingly, Chapter 3.5
20 (commencing with Section 11340) of Part 1 of Division 3 of Title
21 2 of the Government Code shall not apply to any determination,
22 rule, notice, or guideline established or issued by the board in
23 implementing and administering the settlement program
24 authorized by this section.

25 ~~SEC. 13.~~

26 *SEC. 10.* Section 30459.15 is added to the Revenue and
27 Taxation Code, to read:

28 30459.15. (a) (1) Beginning on January 1, 2007, the
29 executive director and chief counsel of the board, or their
30 delegates, may compromise any final tax liability where the
31 reduction of tax is seven thousand five hundred dollars (\$7,500)
32 or less.

33 (2) Except as provided in paragraph (3), the board, upon
34 recommendation by its executive director and chief counsel,
35 jointly, may compromise a final tax liability involving a
36 reduction in tax in excess of seven thousand five hundred dollars
37 (\$7,500). Any recommendation for approval of an offer in
38 compromise that is not either approved or disapproved within 45
39 days of the submission of the recommendation shall be deemed
40 approved.

(3) The board, itself, may by resolution delegate to the executive director and the chief counsel, jointly, the authority to compromise a final tax liability in which the reduction of tax is in excess of seven thousand five hundred dollars (\$7,500), but less than ten thousand dollars (\$10,000).

(b) For purposes of this section, “a final tax liability” means any final tax liability arising under Part 13 (commencing with Section 30001), or related interest, additions to tax, penalties, or other amounts assessed under this part.

(c) Offers in compromise shall be considered only for liabilities that were generated by the following:

(1) A business that has been discontinued or transferred, where the taxpayer making the offer no longer has a controlling interest or association with the transferred business or has a controlling interest or association with a similar type of business as the transferred or discontinued business.

~~(2) A taxpayer that files with the board a statement, under penalty of perjury, that they will no longer purchase untaxed cigarettes or tobacco products from out-of-state vendors for their own use or consumption.~~

(2) A taxpayer that has purchased untaxed.

(d) Offers in compromise shall not be considered under the following conditions:

(1) The taxpayer has been convicted of ~~fraud~~ *felony tax evasion* under this part during the liability period.

(2) The taxpayer has filed a statement under paragraph ~~(2)~~ of ~~subdivision (e)~~ *(3) of subdivision (e)* and continues to purchase untaxed cigarettes or tobacco products from out-of-state vendors for their own use or consumption.

(e) For amounts to be compromised under this section, the following conditions shall exist:

(1) The taxpayer shall establish that:

(A) The amount offered in payment is the most that can be expected to be paid or collected from the taxpayer’s present assets or income.

(B) The taxpayer does not have reasonable prospects of acquiring increased income or assets that would enable the taxpayer to satisfy a greater amount of the liability than the amount offered, within a reasonable period of time.

1 (2) The board shall have determined that acceptance of the
2 compromise is in the best interest of the state.

3 (3) *For liabilities generated in the manner described in*
4 *paragraph (2) of subdivision (c), the taxpayer shall file with the*
5 *board a statement, under penalty of perjury, that he or she will*
6 *no longer purchase untaxed cigarettes or tobacco products from*
7 *out-of-state vendors for his or her own use or consumption.*

8 (f) A determination by the board that it would not be in the
9 best interest of the state to accept an offer in compromise in
10 satisfaction of a final tax liability shall not be subject to
11 administrative appeal or judicial review.

12 (g) (1) Offers for liabilities with a fraud or evasion penalty
13 shall require a minimum offer of the unpaid tax and fraud or
14 evasion penalty.

15 (2) The minimum offer may be waived if it can be shown that
16 the taxpayer making the offer was not the person responsible for
17 ~~perpetrating the fraud or evasion, including, but not limited to,~~
18 ~~evasion. This authorization to waive only applies to~~ partnership
19 accounts where the intent to commit fraud or evasion can be
20 clearly attributed to a partner of the taxpayer.

21 (h) When an offer in compromise is either accepted or
22 rejected, or the terms and conditions of a compromise agreement
23 are fulfilled, the board shall notify the taxpayer in writing. In the
24 event an offer is rejected, the amount posted will either be
25 applied to the liability or refunded, at the discretion of the
26 taxpayer.

27 (i) When more than one taxpayer is liable for the debt, such as
28 with spouses or partnerships or other business combinations,
29 including, but not limited to, taxpayers who are liable through
30 dual determination or successor's liability, the acceptance of an
31 offer in compromise from one liable taxpayer shall ~~not relieve~~
32 ~~the other taxpayers from paying the entire liability. However, the~~
33 ~~amount of the liability shall be reduced by the amount of the~~
34 *reduce the amount of the liability of the other taxpayers by the*
35 *amount of the accepted offer.*

36 (j) Whenever a compromise of tax or penalties or total tax and
37 penalties in excess of five hundred dollars (\$500) is approved,
38 there shall be placed on file for at least one year in the office of
39 the executive director of the board a public record with respect to

1 that compromise. The public record shall include all of the
2 following information:

- 3 (1) The name of the taxpayer.
- 4 (2) The amount of unpaid tax and related penalties, additions
5 to tax, interest, or other amounts involved.
- 6 (3) The amount offered.
- 7 (4) A summary of the reason why the compromise is in the
8 best interest of the state.

9 The public record shall not include any information that relates
10 to any trade secrets, patent, process, style of work, apparatus,
11 business secret, or organizational structure, that if disclosed,
12 would adversely affect the taxpayer or violate the confidentiality
13 provisions of Section 30455. No list shall be prepared and no
14 releases distributed by the board in connection with these
15 statements.

16 (k) Any compromise made under this section may be
17 rescinded, all compromised liabilities may be reestablished,
18 without regard to any statute of limitations that otherwise may be
19 applicable, and no portion of the amount offered in compromise
20 refunded, if either of the following occurs:

21 (1) The board determines that any person did any of the
22 following acts regarding the making of the offer:

23 (A) Concealed from the board any property belonging to the
24 estate of any taxpayer or other person liable for the tax.

25 (B) Received, withheld, destroyed, mutilated, or falsified any
26 book, document, or record or made any false statement, relating
27 to the estate or financial condition of the taxpayer or other person
28 liable for the tax.

29 (2) The taxpayer fails to comply with any of the terms and
30 conditions relative to the offer.

31 (l) Any person who, in connection with any offer or
32 compromise under this section, or offer of that compromise to
33 enter into that agreement, willfully does either of the following
34 shall be guilty of a felony and, upon conviction, shall be fined
35 not more than fifty thousand dollars (\$50,000) or imprisoned not
36 more than three years, or both, together with the costs of
37 investigation and prosecution:

38 (1) Conceals from any officer or employee of this state any
39 property belonging to the estate of a taxpayer or other person
40 liable in respect of the tax.

1 (2) Receives, withholds, destroys, mutilates, or falsifies any
2 book, document, or record, or makes any false statement, relating
3 to the estate or financial condition of the taxpayer or other person
4 liable in respect of the tax.

5 (m) For purposes of this section, “person” means the taxpayer,
6 any member of the taxpayer’s family, any corporation, agent,
7 fiduciary, or representative of, or any other individual or entity
8 acting on behalf of, the taxpayer, or any other corporation or
9 entity owned or controlled by the taxpayer, directly or indirectly,
10 or that owns or controls the taxpayer, directly or indirectly.

11 SEC. 14. Section 32260 of the Revenue and Taxation Code is
12 amended to read:

13 ~~32260. (a) Any person whose estimated tax liability under~~
14 ~~this part averages ten thousand dollars (\$10,000) or more per~~
15 ~~month, as determined by the board pursuant to methods of~~
16 ~~calculation prescribed by the board, shall remit amounts due by~~
17 ~~an electronic funds transfer under procedures prescribed by the~~
18 ~~board.~~

19 ~~(b) Any person whose estimated tax liability under this part~~
20 ~~averages less than ten thousand dollars (\$10,000) per month may~~
21 ~~elect to remit amounts due by electronic funds transfer with the~~
22 ~~approval of the board.~~

23 ~~(c) Any person remitting amounts due pursuant to subdivision~~
24 ~~(a) or (b) shall perform electronic funds transfer in compliance~~
25 ~~with the due dates set forth in Article 1 (commencing with~~
26 ~~Section 32251). Payment is deemed complete on the date the~~
27 ~~electronic funds transfer is initiated if settlement to the state’s~~
28 ~~demand account occurs on or before the banking day following~~
29 ~~the date the transfer is initiated. If settlement to the state’s~~
30 ~~demand account does not occur on or before the banking day~~
31 ~~following the date the transfer is initiated, payment is deemed to~~
32 ~~occur on the date settlement occurs.~~

33 ~~(d) Any person remitting taxes by electronic funds transfer~~
34 ~~shall, on or before the due date of the remittance, file a return for~~
35 ~~the preceding reporting period in the form and manner prescribed~~
36 ~~by the board. Any person who fails to timely file the required~~
37 ~~return shall pay a penalty of 10 percent of the amount of taxes,~~
38 ~~with respect to the period for which the return is required.~~

39 ~~(e) Any person required to remit taxes pursuant to this article~~
40 ~~who remits those taxes by means other than appropriate~~

1 electronic funds transfer shall pay a penalty of 10 percent of the
2 taxes incorrectly remitted.

3 (f) ~~Any person who fails to pay any tax to the state or any~~
4 ~~amount of tax required to be collected and paid to the state,~~
5 ~~except amounts of determinations made by the board under~~
6 ~~Article 2 (commencing with Section 32271) or Article 3~~
7 ~~(commencing with Section 32291), within the time required shall~~
8 ~~pay a penalty of 10 percent of the tax or amount of tax, in~~
9 ~~addition to the tax or amount of tax, plus interest at the modified~~
10 ~~adjusted rate per month, or fraction thereof, established pursuant~~
11 ~~to Section 6591.5, from the date on which the tax became due~~
12 ~~and payable to the state until the date of payment.~~

13 (g) ~~In determining whether a person's estimated tax liability~~
14 ~~averages ten thousand dollars (\$10,000) or more per month, the~~
15 ~~board may consider tax returns filed pursuant to this part and any~~
16 ~~other information in the board's possession.~~

17 (h) ~~The penalties imposed by subdivisions (d), (e), and (f)~~
18 ~~shall be limited to a maximum of 10 percent of the taxes due for~~
19 ~~any one return. Any person remitting taxes by electronic funds~~
20 ~~transfer shall be subject to the penalties under this section and not~~
21 ~~Section 32252.~~

22 (i) ~~The board shall promulgate regulations pursuant to Chapter~~
23 ~~3.5 (commencing with Section 11340) of Part 1 of Division 3 of~~
24 ~~Title 2 of the Government Code for purposes of implementing~~
25 ~~this section.~~

26 ~~SEC. 15.~~

27 *SEC. 11.* Section 32402.2 is added to the Revenue and
28 Taxation Code, to read:

29 32402.2. Notwithstanding Section 32402, a refund of an
30 overpayment of any tax, penalty, or interest collected by the
31 board by means of levy, through the use of liens, or by other
32 enforcement procedures, shall be approved if a claim for a refund
33 is filed within three years of the date of an overpayment.

34 ~~SEC. 16.~~

35 *SEC. 12.* Section 32471 of the Revenue and Taxation Code is
36 amended to read:

37 32471. (a) It is the intent of the Legislature that the State
38 Board of Equalization, its staff, and the Attorney General pursue
39 settlements as authorized under this section with respect to civil
40 tax matters in dispute that are the subject of protests, appeals, or

1 refund claims, consistent with a reasonable evaluation of the
2 costs and risks associated with litigation of these matters.

3 (b) (1) Except as provided in paragraph (3) and subject to
4 paragraph (2), the executive director or chief counsel, if
5 authorized by the executive director, of the board may
6 recommend to the State Board of Equalization, itself, a
7 settlement of any civil tax matter in dispute.

8 (2) No recommendation of settlement shall be submitted to the
9 board, itself, unless and until that recommendation has been
10 submitted by the executive director or chief counsel to the
11 Attorney General. Within 30 days of receiving that
12 recommendation, the Attorney General shall review the
13 recommendation and advise, in writing, the executive director or
14 chief counsel of the board of his or her conclusions as to whether
15 the recommendation is reasonable from an overall perspective.
16 The executive director or chief counsel shall, with each
17 recommendation of settlement submitted to the board, itself, also
18 submit the Attorney General's written conclusions obtained
19 pursuant to this paragraph.

20 (3) A settlement of any civil tax matter in dispute involving a
21 reduction of tax or penalties in settlement, the total of which
22 reduction of tax and penalties in settlement does not exceed five
23 thousand dollars (\$5,000), may be approved by the executive
24 director and chief counsel, jointly. The executive director shall
25 notify the board, itself, of any settlement approved pursuant to
26 this paragraph.

27 (c) Whenever a reduction of tax, or penalties, or total tax and
28 penalties in settlement in excess of five hundred dollars (\$500) is
29 approved pursuant to this section, there shall be placed on file,
30 for at least one year, in the office of the executive director of the
31 board a public record with respect to that settlement. The public
32 record shall include all of the following information:

33 (1) The name or names of the taxpayers who are parties to the
34 settlement.

35 (2) The total amount in dispute.

36 (3) The amount agreed to pursuant to the settlement.

37 (4) A summary of the reasons why the settlement is in the best
38 interests of the State of California.

1 (5) For any settlement approved by the board, itself, the
2 Attorney General's conclusion as to whether the recommendation
3 of settlement was reasonable from an overall perspective.

4 The public record shall not include any information that relates
5 to any trade secret, patent, process, style of work, apparatus,
6 business secret, or organizational structure that, if disclosed,
7 would adversely affect the taxpayer or the national defense.

8 (d) The members of the State Board of Equalization shall not
9 participate in the settlement of tax matters pursuant to this
10 section, except as provided in subdivision (e).

11 (e) (1) Any recommendation for settlement shall be approved
12 or disapproved by the board, itself, within 45 days of the
13 submission of that recommendation to the board. Any
14 recommendation for settlement that is not either approved or
15 disapproved by the board, itself, within 45 days of the
16 submission of that recommendation shall be deemed approved.
17 Upon approval of a recommendation for settlement, the matter
18 shall be referred back to the executive director or chief counsel in
19 accordance with the decision of the board.

20 (2) Disapproval of a recommendation for settlement shall be
21 made only by a majority vote of the board. Where the board
22 disapproves a recommendation for settlement, the matter shall be
23 remanded to board staff for further negotiation, and may be
24 resubmitted to the board, in the same manner and subject to the
25 same requirements as the initial submission, at the discretion of
26 the executive director or chief counsel.

27 (f) All settlements entered into pursuant to this section shall be
28 final and nonappealable, except upon a showing of fraud or
29 misrepresentation with respect to a material fact.

30 (g) Any proceedings undertaken by the board itself pursuant to
31 a settlement as described in this section shall be conducted in a
32 closed session or sessions. Except as provided in subdivision (c),
33 any settlement considered or entered into pursuant to this section
34 shall constitute confidential tax information for purposes of
35 Section 32455.

36 (h) This section shall apply only to civil tax matters in dispute
37 on or after the effective date of the act adding this subdivision.

38 (i) The Legislature finds that it is essential for fiscal purposes
39 that the settlement program authorized by this section be
40 expeditiously implemented. Accordingly, Chapter 3.5

(commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any determination, rule, notice, or guideline established or issued by the board in implementing and administering the settlement program authorized by this section.

~~SEC. 17.~~

SEC. 13. Section 32471.5 is added to the Revenue and Taxation Code, to read:

32471.5. (a) (1) Beginning on January 1, 2007, the executive director and chief counsel of the board, or their delegates, may compromise any final tax liability where the reduction of tax is seven thousand five hundred dollars (\$7,500) or less.

(2) Except as provided in paragraph (3), the board, upon recommendation by its executive director and chief counsel, jointly, may compromise a final tax liability involving a reduction in tax in excess of seven thousand five hundred dollars (\$7,500). Any recommendation for approval of an offer in compromise that is not either approved or disapproved within 45 days of the submission of the recommendation shall be deemed approved.

(3) The board, itself, may by resolution delegate to the executive director and the chief counsel, jointly, the authority to compromise a final tax liability in which the reduction of tax is in excess of seven thousand five hundred dollars (\$7,500), but less than ten thousand dollars (\$10,000).

(b) For purposes of this section, “a final tax liability” means any final tax liability arising under Part 14 (commencing with Section 32001), or related interest, additions to tax, penalties, or other amounts assessed under this part.

(c) Offers in compromise shall be considered only for liabilities that were generated by a business that has been discontinued or transferred, where the taxpayer making the offer no longer has a controlling interest or association with the transferred business or has a controlling interest or association with a similar type of business as the transferred or discontinued business.

(d) Offers in compromise shall not be considered where the taxpayer has been convicted of ~~fraud~~ *felony tax evasion* under this part during the liability period.

(e) For amounts to be compromised under this section, the following conditions shall exist:

(1) The taxpayer shall establish that:

(A) The amount offered in payment is the most that can be expected to be paid or collected from the taxpayer's present assets or income.

(B) The taxpayer does not have reasonable prospects of acquiring increased income or assets that would enable the taxpayer to satisfy a greater amount of the liability than the amount offered, within a reasonable period of time.

(2) The board shall have determined that acceptance of the compromise is in the best interest of the state.

(f) A determination by the board that it would not be in the best interest of the state to accept an offer in compromise in satisfaction of a final tax liability shall not be subject to administrative appeal or judicial review.

(g) (1) Offers for liabilities with a fraud or evasion penalty shall require a minimum offer of the unpaid tax and fraud or evasion penalty.

(2) The minimum offer may be waived if it can be shown that the taxpayer making the offer was not the person responsible for perpetrating the fraud or evasion, ~~including, but not limited to, evasion. This authorization to waive only applies to~~ partnership accounts where the intent to commit fraud or evasion can be clearly attributed to a partner of the taxpayer.

(h) When an offer in compromise is either accepted or rejected, or the terms and conditions of a compromise agreement are fulfilled, the board shall notify the taxpayer in writing. In the event an offer is rejected, the amount posted will either be applied to the liability or refunded, at the discretion of the taxpayer.

(i) When more than one taxpayer is liable for the debt, such as with spouses or partnerships or other business combinations, including, but not limited to, taxpayers who are liable through dual determination or successor's liability, the acceptance of an offer in compromise from one liable taxpayer shall ~~not relieve the other taxpayers from paying the entire liability. However, the amount of the liability shall be reduced by the amount of the~~ *reduce the amount of the liability of the other taxpayers by the amount of the* accepted offer.

1 (j) Whenever a compromise of tax or penalties or total tax and
2 penalties in excess of five hundred dollars (\$500) is approved,
3 there shall be placed on file for at least one year in the office of
4 the executive director of the board a public record with respect to
5 that compromise. The public record shall include all of the
6 following information:

7 (1) The name of the taxpayer.

8 (2) The amount of unpaid tax and related penalties, additions
9 to tax, interest, or other amounts involved.

10 (3) The amount offered.

11 (4) A summary of the reason why the compromise is in the
12 best interest of the state.

13 The public record shall not include any information that relates
14 to any trade secrets, patent, process, style of work, apparatus,
15 business secret, or organizational structure, that if disclosed,
16 would adversely affect the taxpayer or violate the confidentiality
17 provisions of Section 32455. No list shall be prepared and no
18 releases distributed by the board in connection with these
19 statements.

20 (k) Any compromise made under this section may be
21 rescinded, all compromised liabilities may be reestablished,
22 without regard to any statute of limitations that otherwise may be
23 applicable, and no portion of the amount offered in compromise
24 refunded, if either of the following occurs:

25 (1) The board determines that any person did any of the
26 following acts regarding the making of the offer:

27 (A) Concealed from the board any property belonging to the
28 estate of any taxpayer or other person liable for the tax.

29 (B) Received, withheld, destroyed, mutilated, or falsified any
30 book, document, or record or made any false statement, relating
31 to the estate or financial condition of the taxpayer or other person
32 liable for the tax.

33 (2) The taxpayer fails to comply with any of the terms and
34 conditions relative to the offer.

35 (l) Any person who, in connection with any offer or
36 compromise under this section, or offer of that compromise to
37 enter into that agreement, willfully does either of the following
38 shall be guilty of a felony and, upon conviction, shall be fined
39 not more than fifty thousand dollars (\$50,000) or imprisoned not

1 more than three years, or both, together with the costs of
2 investigation and prosecution:

3 (1) Conceals from any officer or employee of this state any
4 property belonging to the estate of a taxpayer or other person
5 liable in respect of the tax.

6 (2) Receives, withholds, destroys, mutilates, or falsifies any
7 book, document, or record, or makes any false statement, relating
8 to the estate or financial condition of the taxpayer or other person
9 liable in respect of the tax.

10 (m) For purposes of this section, “person” means the taxpayer,
11 any member of the taxpayer’s family, any corporation, agent,
12 fiduciary, or representative of, or any other individual or entity
13 acting on behalf of, the taxpayer, or any other corporation or
14 entity owned or controlled by the taxpayer, directly or indirectly,
15 or that owns or controls the taxpayer, directly or indirectly.

16 ~~SEC. 18.~~

17 *SEC. 14.* Section 38800 is added to the Revenue and Taxation
18 Code, to read:

19 38800. (a) (1) Beginning on January 1, 2007, the executive
20 director and chief counsel of the board, or their delegates, may
21 compromise any final tax liability where the reduction of tax is
22 seven thousand five hundred dollars (\$7,500) or less.

23 (2) Except as provided in paragraph (3), the board, upon
24 recommendation by its executive director and chief counsel,
25 jointly, may compromise a final tax liability involving a
26 reduction in tax in excess of seven thousand five hundred dollars
27 (\$7,500). Any recommendation for approval of an offer in
28 compromise that is not either approved or disapproved within 45
29 days of the submission of the recommendation shall be deemed
30 approved.

31 (3) The board, itself, may by resolution delegate to the
32 executive director and the chief counsel, jointly, the authority to
33 compromise a final tax liability in which the reduction of tax is in
34 excess of seven thousand five hundred dollars (\$7,500), but less
35 than ten thousand dollars (\$10,000).

36 (b) For purposes of this section, “a final tax liability” means
37 any final tax liability arising under Part 18.5 (commencing with
38 Section 38101), or related interest, additions to tax, penalties, or
39 other amounts assessed under this part.

1 (c) Offers in compromise shall be considered only for
2 liabilities that were generated from persons who no longer
3 harvest timber, or property owners that no longer harvest their
4 property, except where the taxpayer making the offer has their
5 primary residence located on the property that generated the
6 timber tax liability.

7 (d) Offers in compromise shall not be considered where the
8 taxpayer has been convicted of ~~fraud~~ *felony tax evasion* under
9 this part during the liability period.

10 (e) For amounts to be compromised under this section, the
11 following conditions shall exist:

12 (1) The taxpayer shall establish that:

13 (A) The amount offered in payment is the most that can be
14 expected to be paid or collected from the taxpayer's present
15 assets or income.

16 (B) The taxpayer does not have reasonable prospects of
17 acquiring increased income or assets that would enable the
18 taxpayer to satisfy a greater amount of the liability than the
19 amount offered, within a reasonable period of time.

20 (2) The board shall have determined that acceptance of the
21 compromise is in the best interest of the state.

22 (f) A determination by the board that it would not be in the
23 best interest of the state to accept an offer in compromise in
24 satisfaction of a final tax liability shall not be subject to
25 administrative appeal or judicial review.

26 (g) (1) Offers for liabilities with a fraud or evasion penalty
27 shall require a minimum offer of the unpaid tax and fraud or
28 evasion penalty.

29 (2) The minimum offer may be waived if it can be shown that
30 the taxpayer making the offer was not the person responsible for
31 perpetrating the fraud or ~~evasion, including, but not limited to,~~
32 *evasion. This authorization to waive only applies to* partnership
33 accounts where the intent to commit fraud or evasion can be
34 clearly attributed to a partner of the taxpayer.

35 (h) When an offer in compromise is either accepted or
36 rejected, or the terms and conditions of a compromise agreement
37 are fulfilled, the board shall notify the taxpayer in writing. In the
38 event an offer is rejected, the amount posted will either be
39 applied to the liability or refunded, at the discretion of the
40 taxpayer.

(i) When more than one taxpayer is liable for the debt, such as with spouses or partnerships or other business combinations, including, but not limited to, taxpayers who are liable through dual determination or successor's liability, the acceptance of an offer in compromise from one liable taxpayer shall ~~not relieve the other taxpayers from paying the entire liability. However, the amount of the liability shall be reduced by the amount of the~~ *reduce the amount of the liability of the other taxpayers by the amount of the* accepted offer.

(j) Whenever a compromise of tax or penalties or total tax and penalties in excess of five hundred dollars (\$500) is approved, there shall be placed on file for at least one year in the office of the executive director of the board a public record with respect to that compromise. The public record shall include all of the following information:

- (1) The name of the taxpayer.
- (2) The amount of unpaid tax and related penalties, additions to tax, interest, or other amounts involved.
- (3) The amount offered.
- (4) A summary of the reason why the compromise is in the best interest of the state.

The public record shall not include any information that relates to any trade secrets, patent, process, style of work, apparatus, business secret, or organizational structure, that if disclosed, would adversely affect the taxpayer or violate the confidentiality provisions of Section 38705. No list shall be prepared and no releases distributed by the board in connection with these statements.

(k) Any compromise made under this section may be rescinded, all compromised liabilities may be reestablished, without regard to any statute of limitations that otherwise may be applicable, and no portion of the amount offered in compromise refunded, if either of the following occurs:

(1) The board determines that any person did any of the following acts regarding the making of the offer:

(A) Concealed from the board any property belonging to the estate of any taxpayer or other person liable for the tax.

(B) Received, withheld, destroyed, mutilated, or falsified any book, document, or record or made any false statement, relating

1 to the estate or financial condition of the taxpayer or other person
2 liable for the tax.

3 (2) The taxpayer fails to comply with any of the terms and
4 conditions relative to the offer.

5 (l) Any person who, in connection with any offer or
6 compromise under this section, or offer of that compromise to
7 enter into that agreement, willfully does either of the following
8 shall be guilty of a felony and, upon conviction, shall be fined
9 not more than fifty thousand dollars (\$50,000) or imprisoned not
10 more than three years, or both, together with the costs of
11 investigation and prosecution:

12 (1) Conceals from any officer or employee of this state any
13 property belonging to the estate of a taxpayer or other person
14 liable in respect of the tax.

15 (2) Receives, withholds, destroys, mutilates, or falsifies any
16 book, document, or record, or makes any false statement, relating
17 to the estate or financial condition of the taxpayer or other person
18 liable in respect of the tax.

19 (m) For purposes of this section, “person” means the taxpayer,
20 any member of the taxpayer’s family, any corporation, agent,
21 fiduciary, or representative of, or any other individual or entity
22 acting on behalf of, the taxpayer, or any other corporation or
23 entity owned or controlled by the taxpayer, directly or indirectly,
24 or that owns or controls the taxpayer, directly or indirectly.

25 ~~SEC. 19.—Section 40067 of the Revenue and Taxation Code is~~
26 ~~amended to read:~~

27 ~~40067. (a) Any person whose estimated surcharge liability~~
28 ~~under this part averages ten thousand dollars (\$10,000) or more~~
29 ~~per month, as determined by the board pursuant to methods of~~
30 ~~calculation prescribed by the board, shall remit amounts due by~~
31 ~~an electronic funds transfer under procedures prescribed by the~~
32 ~~board.~~

33 ~~(b) Any person whose estimated surcharge liability under this~~
34 ~~part averages less than ten thousand dollars (\$10,000) per month~~
35 ~~may elect to remit amounts due by electronic funds transfer with~~
36 ~~the approval of the board.~~

37 ~~(c) Any person remitting amounts due pursuant to subdivision~~
38 ~~(a) or (b) shall perform electronic funds transfer in compliance~~
39 ~~with the due dates set forth in Article 1 (commencing with~~
40 ~~Section 40051) and Article 2 (commencing with Section 40061).~~

~~Payment is deemed complete on the date the electronic funds transfer is initiated if settlement to the state's demand account occurs on or before the banking day following the date the transfer is initiated. If settlement to the state's demand account does not occur on or before the banking day following the date the transfer is initiated, payment is deemed to occur on the date settlement occurs.~~

~~(d) Any person remitting surcharges by electronic funds transfer shall, on or before the due date of the remittance, file a return for the preceding reporting period in the form and manner prescribed by the board. Any person who fails to timely file the required return shall pay a penalty of 10 percent of the amount of the surcharge with respect to the period for which the return is required.~~

~~(e) Any person required to remit surcharges pursuant to this article who remits those surcharges by means other than appropriate electronic funds transfer shall pay a penalty of 10 percent of the surcharges incorrectly remitted.~~

~~(f) Any person who fails to pay any surcharge to the state or any amount of surcharge required to be collected and paid to the state, except amounts of determinations made by the board under Article 3 (commencing with Section 40071) or Article 4 (commencing with Section 40081), within the time required shall pay a penalty of 10 percent of the surcharge or amount of surcharge, in addition to the surcharge or amount of surcharge, plus interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date on which the surcharge or the amount of surcharge required to be collected became due and payable to the state until the date of payment.~~

~~(g) In determining whether a person's estimated surcharge liability averages ten thousand dollars (\$10,000) or more per month, the board may consider returns filed pursuant to this part and any other information in the board's possession.~~

~~(h) The penalties imposed by subdivisions (d), (e), and (f) shall be limited to a maximum of 10 percent of the surcharge due for any one return. Any person remitting surcharges by electronic funds transfer shall be subject to the penalties under this section and not Section 40101.~~

1 ~~(i) The board shall promulgate regulations pursuant to Chapter~~
2 ~~3.5 (commencing with Section 11340) of Part 1 of Division 3 of~~
3 ~~Title 2 of the Government Code for purposes of implementing~~
4 ~~this section.~~

5 ~~SEC. 20.~~

6 *SEC. 15.* Section 40112.2 is added to the Revenue and
7 Taxation Code, to read:

8 40112.2. Notwithstanding Section 40112, a refund of an
9 overpayment of any surcharge, penalty, or interest collected by
10 the board by means of levy, through the use of liens, or by other
11 enforcement procedures, shall be approved if a claim for a refund
12 is filed within three years of the date of an overpayment.

13 ~~SEC. 21.~~

14 *SEC. 16.* Section 40211 of the Revenue and Taxation Code is
15 amended to read:

16 40211. (a) It is the intent of the Legislature that the State
17 Board of Equalization, its staff, and the Attorney General pursue
18 settlements as authorized under this section with respect to
19 surcharge matters in dispute that are the subject of protests,
20 appeals, or refund claims, consistent with a reasonable evaluation
21 of the costs and risks associated with litigation of these matters.

22 (b) (1) Except as provided in paragraph (3) and subject to
23 paragraph (2), the executive director or chief counsel, if
24 authorized by the executive director, of the board may
25 recommend to the State Board of Equalization, itself, a
26 settlement of any surcharge matter in dispute.

27 (2) No recommendation of settlement shall be submitted to the
28 board, itself, unless and until that recommendation has been
29 submitted by the executive director or chief counsel to the
30 Attorney General. Within 30 days of receiving that
31 recommendation, the Attorney General shall review the
32 recommendation and advise, in writing, the executive director or
33 chief counsel of the board of his or her conclusions as to whether
34 the recommendation is reasonable from an overall perspective.
35 The executive director or chief counsel shall, with each
36 recommendation of settlement submitted to the board, itself, also
37 submit the Attorney General's written conclusions obtained
38 pursuant to this paragraph.

39 (3) A settlement of any civil surcharge matter in dispute
40 involving a reduction of surcharge or penalties in settlement, the

1 total of which reduction of surcharge and penalties in settlement
2 does not exceed five thousand dollars (\$5,000), may be approved
3 by the executive director and chief counsel, jointly. The
4 executive director shall notify the board, itself, of any settlement
5 approved pursuant to this paragraph.

6 (c) Whenever a reduction of surcharge, or penalties, or total
7 surcharge and penalties in settlement in excess of five hundred
8 dollars (\$500) is approved pursuant to this section, there shall be
9 placed on file, for at least one year, in the office of the executive
10 director of the board a public record with respect to that
11 settlement. The public record shall include all of the following
12 information:

13 (1) The name or names of the surcharge payers who are parties
14 to the settlement.

15 (2) The total amount in dispute.

16 (3) The amount agreed to pursuant to the settlement.

17 (4) A summary of the reasons why the settlement is in the best
18 interests of the State of California.

19 (5) For any settlement approved by the board, itself, the
20 Attorney General's conclusion as to whether the recommendation
21 of settlement was reasonable from an overall perspective.

22 The public record shall not include any information that relates
23 to any trade secret, patent, process, style of work, apparatus,
24 business secret, or organizational structure that, if disclosed,
25 would adversely affect the surcharge payer or the national
26 defense.

27 (d) The members of the State Board of Equalization shall not
28 participate in the settlement of surcharge matters pursuant to this
29 section, except as provided in subdivision (e).

30 (e) (1) Any recommendation for settlement shall be approved
31 or disapproved by the board, itself, within 45 days of the
32 submission of that recommendation to the board. Any
33 recommendation for settlement that is not either approved or
34 disapproved by the board, itself, within 45 days of the
35 submission of that recommendation shall be deemed approved.
36 Upon approval of a recommendation for settlement, the matter
37 shall be referred back to the executive director or chief counsel in
38 accordance with the decision of the board.

39 (2) Disapproval of a recommendation for settlement shall be
40 made only by a majority vote of the board. Where the board

1 disapproves a recommendation for settlement, the matter shall be
2 remanded to board staff for further negotiation, and may be
3 resubmitted to the board, in the same manner and subject to the
4 same requirements as the initial submission, at the discretion of
5 the executive director or chief counsel.

6 (f) All settlements entered into pursuant to this section shall be
7 final and nonappealable, except upon a showing of fraud or
8 misrepresentation with respect to a material fact.

9 (g) Any proceedings undertaken by the board itself pursuant to
10 a settlement as described in this section shall be conducted in a
11 closed session or sessions.

12 (h) This section shall apply only to surcharge matters in
13 dispute on or after the effective date of the act adding this
14 subdivision.

15 (i) The Legislature finds that it is essential for fiscal purposes
16 that the settlement program authorized by this section be
17 expeditiously implemented. Accordingly, Chapter 3.5
18 (commencing with Section 11340) of Part 1 of Division 3 of Title
19 2 of the Government Code shall not apply to any determination,
20 rule, notice, or guideline established or issued by the board in
21 implementing and administering the settlement program
22 authorized by this section.

23 ~~SEC. 22.~~

24 *SEC. 17.* Section 40211.5 is added to the Revenue and
25 Taxation Code, to read:

26 40211.5. (a) (1) Beginning on January 1, 2007, the executive
27 director and chief counsel of the board, or their delegates, may
28 compromise any final surcharge liability where the reduction of
29 surcharges is seven thousand five hundred dollars (\$7,500) or
30 less.

31 (2) Except as provided in paragraph (3), the board, upon
32 recommendation by its executive director and chief counsel,
33 jointly, may compromise a final surcharge liability involving a
34 reduction in surcharges in excess of seven thousand five hundred
35 dollars (\$7,500). Any recommendation for approval of an offer in
36 compromise that is not either approved or disapproved within 45
37 days of the submission of the recommendation shall be deemed
38 approved.

39 (3) The board, itself, may by resolution delegate to the
40 executive director and the chief counsel, jointly, the authority to

1 compromise a final surcharge liability in which the reduction of
2 surcharges is in excess of seven thousand five hundred dollars
3 (\$7,500), but less than ten thousand dollars (\$10,000).

4 (b) For purposes of this section, “a final surcharge liability”
5 means any final surcharge liability arising under Part 19
6 (commencing with Section 40001), or related interest, additions
7 to surcharges, penalties, or other amounts assessed under this
8 part.

9 (c) Offers in compromise shall be considered only for
10 liabilities that were generated from a business that has been
11 discontinued or transferred, where the surcharge payer making
12 the offer no longer has a controlling interest or association with
13 the transferred business or has a controlling interest or
14 association with a similar type of business as the transferred or
15 discontinued business.

16 (d) Offers in compromise shall not be considered where the
17 surcharge payer has been convicted of ~~fraud~~ *felony tax evasion*
18 under this part during the liability period.

19 (e) For amounts to be compromised under this section, the
20 following conditions shall exist:

21 (1) The surcharge payer shall establish that:

22 (A) The amount offered in payment is the most that can be
23 expected to be paid or collected from the surcharge payer’s
24 present assets or income.

25 (B) The surcharge payer does not have reasonable prospects of
26 acquiring increased income or assets that would enable the
27 surcharge payer to satisfy a greater amount of the liability than
28 the amount offered, within a reasonable period of time.

29 (2) The board shall have determined that acceptance of the
30 compromise is in the best interest of the state.

31 (f) A determination by the board that it would not be in the
32 best interest of the state to accept an offer in compromise in
33 satisfaction of a final surcharge liability shall not be subject to
34 administrative appeal or judicial review.

35 (g) (1) Offers for liabilities with a fraud or evasion penalty
36 shall require a minimum offer of the unpaid surcharge and fraud
37 or evasion penalty.

38 (2) The minimum offer may be waived if it can be shown that
39 the surcharge payer making the offer was not the person
40 ~~responsible for perpetrating the fraud or evasion, including, but~~

1 ~~not limited to, partnership accounts where the intent to commit~~
2 ~~responsible for perpetrating the fraud or evasion. This~~
3 ~~authorization to waive only applies to partnership accounts~~
4 ~~where the intent to commit fraud or evasion can be clearly~~
5 attributed to a partner of the surcharge payer.

6 (h) When an offer in compromise is either accepted or
7 rejected, or the terms and conditions of a compromise agreement
8 are fulfilled, the board shall notify the surcharge payer in writing.
9 In the event an offer is rejected, the amount posted will either be
10 applied to the liability or refunded, at the discretion of the
11 surcharge payer.

12 (i) When more than one surcharge payer is liable for the debt,
13 such as with spouses or partnerships or other business
14 combinations, including, but not limited to, surcharge payers who
15 are liable through dual determination or successor's liability, the
16 acceptance of an offer in compromise from one liable surcharge
17 payer shall not relieve the other surcharge payers from paying the
18 entire liability. ~~However, the amount of the liability shall be~~
19 ~~reduced by the amount of the accepted offer. payer shall reduce~~
20 ~~the amount of the liability of the other surcharge payers by the~~
21 ~~amount of the accepted offer.~~

22 (j) Whenever a compromise of surcharges or penalties or total
23 surcharges and penalties in excess of five hundred dollars (\$500)
24 is approved, there shall be placed on file for at least one year in
25 the office of the executive director of the board a public record
26 with respect to that compromise. The public record shall include
27 all of the following information:

- 28 (1) The name of the surcharge payer.
29 (2) The amount of unpaid surcharges and related penalties,
30 additions to surcharges, interest, or other amounts involved.
31 (3) The amount offered.
32 (4) A summary of the reason why the compromise is in the
33 best interest of the state.

34 The public record shall not include any information that relates
35 to any trade secrets, patent, process, style of work, apparatus,
36 business secret, or organizational structure, that if disclosed,
37 would adversely affect the surcharge payer or violate the
38 confidentiality provisions of Section 40175. No list shall be
39 prepared and no releases distributed by the board in connection
40 with these statements.

(k) Any compromise made under this section may be rescinded, all compromised liabilities may be reestablished, without regard to any statute of limitations that otherwise may be applicable, and no portion of the amount offered in compromise refunded, if either of the following occurs:

(1) The board determines that any person did any of the following acts regarding the making of the offer:

(A) Concealed from the board any property belonging to the estate of any surcharge payer or other person liable for the surcharge.

(B) Received, withheld, destroyed, mutilated, or falsified any book, document, or record or made any false statement, relating to the estate or financial condition of the surcharge payer or other person liable for the surcharge.

(2) The surcharge payer fails to comply with any of the terms and conditions relative to the offer.

(l) Any person who, in connection with any offer or compromise under this section, or offer of that compromise to enter into that agreement, willfully does either of the following shall be guilty of a felony and, upon conviction, shall be fined not more than fifty thousand dollars (\$50,000) or imprisoned not more than three years, or both, together with the costs of investigation and prosecution:

(1) Conceals from any officer or employee of this state any property belonging to the estate of a surcharge payer or other person liable in respect of the surcharge.

(2) Receives, withholds, destroys, mutilates, or falsifies any book, document, or record, or makes any false statement, relating to the estate or financial condition of the surcharge payer or other person liable in respect of the surcharge.

(m) For purposes of this section, “person” means the taxpayer, any member of the surcharge payer’s family, any corporation, agent, fiduciary, or representative of, or any other individual or entity acting on behalf of, the surcharge payer, or any other corporation or entity owned or controlled by the surcharge payer, directly or indirectly, or that owns or controls the surcharge payer, directly or indirectly.

~~SEC. 23.—Section 41060 of the Revenue and Taxation Code is amended to read:~~

1 ~~41060. (a) Any person whose estimated surcharge liability~~
2 ~~under this part averages ten thousand dollars (\$10,000) or more~~
3 ~~per month, as determined by the board pursuant to methods of~~
4 ~~calculation prescribed by the board, shall remit amounts due by~~
5 ~~an electronic funds transfer under procedures prescribed by the~~
6 ~~board.~~

7 ~~(b) Any person whose estimated surcharge liability under this~~
8 ~~part averages less than ten thousand dollars (\$10,000) per month~~
9 ~~may elect to remit amounts due by electronic funds transfer with~~
10 ~~the approval of the board.~~

11 ~~(c) Any person remitting amounts due pursuant to subdivision~~
12 ~~(a) or (b) shall perform electronic funds transfer in compliance~~
13 ~~with the due dates set forth in Article 1 (commencing with~~
14 ~~Section 41050). Payment is deemed complete on the date the~~
15 ~~electronic funds transfer is initiated if settlement to the state's~~
16 ~~demand account occurs on or before the banking day following~~
17 ~~the date the transfer is initiated. If settlement to the state's~~
18 ~~demand account does not occur on or before the banking day~~
19 ~~following the date the transfer is initiated, payment is deemed to~~
20 ~~occur on the date settlement occurs.~~

21 ~~(d) Any person remitting surcharges by electronic funds~~
22 ~~transfer shall, on or before the due date of the remittance, file a~~
23 ~~return for the preceding reporting period in the form and manner~~
24 ~~prescribed by the board. Any person who fails to timely file the~~
25 ~~required return shall pay a penalty of 10 percent of the amount of~~
26 ~~the surcharges with respect to the period for which the return is~~
27 ~~required.~~

28 ~~(e) Any person required to remit surcharges pursuant to this~~
29 ~~article who remits those surcharges by means other than~~
30 ~~appropriate electronic funds transfer shall pay a penalty of 10~~
31 ~~percent of the surcharges incorrectly remitted.~~

32 ~~(f) Any person who fails to pay any surcharge to the state or~~
33 ~~any amount of surcharge required to be collected and paid to the~~
34 ~~state, except amounts of determinations made by the board under~~
35 ~~Article 3 (commencing with Section 41070) or Article 4~~
36 ~~(commencing with Section 41080), within the time required shall~~
37 ~~pay a penalty of 10 percent of the surcharge or amount of~~
38 ~~surcharge, in addition to the surcharge or amount of surcharge,~~
39 ~~plus interest at the modified adjusted rate per month, or fraction~~
40 ~~thereof, established pursuant to Section 6591.5, from the date on~~

1 which the surcharge or the amount of surcharge required to be
2 collected became due and payable to the state until the date of
3 payment.

4 (g) In determining whether a person's estimated surcharge
5 liability averages ten thousand dollars (\$10,000) or more per
6 month, the board may consider returns filed pursuant to this part
7 and any other information in the board's possession.

8 (h) The penalties imposed by subdivisions (d), (e), and (f)
9 shall be limited to a maximum of 10 percent of the surcharges
10 due for any one return. Any person remitting surcharges by
11 electronic funds transfer shall be subject to the penalties under
12 this section and not Section 41095.

13 (i) The board shall promulgate regulations pursuant to Chapter
14 3.5 (commencing with Section 11340) of Part 1 of Division 3 of
15 Title 2 of the Government Code for purposes of implementing
16 this section.

17 SEC. 24.

18 SEC. 18. Section 41101.2 is added to the Revenue and
19 Taxation Code, to read:

20 41101.2. Notwithstanding Section 41101, a refund of an
21 overpayment of any surcharge, penalty, or interest collected by
22 the board by means of levy, through the use of liens, or by other
23 enforcement procedures, shall be approved if a claim for a refund
24 is filed within three years of the date of an overpayment.

25 SEC. 25.

26 SEC. 19. Section 41171 of the Revenue and Taxation Code is
27 amended to read:

28 41171. (a) It is the intent of the Legislature that the State
29 Board of Equalization, its staff, and the Attorney General pursue
30 settlements as authorized under this section with respect to
31 surcharge matters in dispute that are the subject of protests,
32 appeals, or refund claims, consistent with a reasonable evaluation
33 of the costs and risks associated with litigation of these matters.

34 (b) (1) Except as provided in paragraph (3) and subject to
35 paragraph (2), the executive director or chief counsel, if
36 authorized by the executive director, of the board may
37 recommend to the State Board of Equalization, itself, a
38 settlement of any surcharge matter in dispute.

39 (2) No recommendation of settlement shall be submitted to the
40 board, itself, unless and until that recommendation has been

1 submitted by the executive director or chief counsel to the
2 Attorney General. Within 30 days of receiving that
3 recommendation, the Attorney General shall review the
4 recommendation and advise, in writing, the executive director or
5 chief counsel of the board of his or her conclusions as to whether
6 the recommendation is reasonable from an overall perspective.
7 The executive director or chief counsel shall, with each
8 recommendation of settlement submitted to the board, itself, also
9 submit the Attorney General's written conclusions obtained
10 pursuant to this paragraph.

11 (3) A settlement of any civil surcharge matter in dispute
12 involving a reduction of surcharge or penalties in settlement, the
13 total of which reduction of surcharge and penalties in settlement
14 does not exceed five thousand dollars (\$5,000), may be approved
15 by the executive director and chief counsel, jointly. The
16 executive director shall notify the board, itself, of any settlement
17 approved pursuant to this paragraph.

18 (c) Whenever a reduction of surcharge, or penalties, or total
19 surcharge and penalties in settlement in excess of five hundred
20 dollars (\$500) is approved pursuant to this section, there shall be
21 placed on file, for at least one year, in the office of the executive
22 director of the board a public record with respect to that
23 settlement. The public record shall include all of the following
24 information:

25 (1) The name or names of the surcharge payers who are parties
26 to the settlement.

27 (2) The total amount in dispute.

28 (3) The amount agreed to pursuant to the settlement.

29 (4) A summary of the reasons why the settlement is in the best
30 interests of the State of California.

31 (5) For any settlement approved by the board, itself, the
32 Attorney General's conclusion as to whether the recommendation
33 of settlement was reasonable from an overall perspective.

34 The public record shall not include any information that relates
35 to any trade secret, patent, process, style of work, apparatus,
36 business secret, or organizational structure that, if disclosed,
37 would adversely affect the surcharge payer or the national
38 defense.

(d) The members of the State Board of Equalization shall not participate in the settlement of surcharge matters pursuant to this section, except as provided in subdivision (e).

(e) (1) Any recommendation for settlement shall be approved or disapproved by the board, itself, within 45 days of the submission of that recommendation to the board. Any recommendation for settlement that is not either approved or disapproved by the board, itself, within 45 days of the submission of that recommendation shall be deemed approved. Upon approval of a recommendation for settlement, the matter shall be referred back to the executive director or chief counsel in accordance with the decision of the board.

(2) Disapproval of a recommendation for settlement shall be made only by a majority vote of the board. Where the board disapproves a recommendation for settlement, the matter shall be remanded to board staff for further negotiation, and may be resubmitted to the board, in the same manner and subject to the same requirements as the initial submission, at the discretion of the executive director or chief counsel.

(f) All settlements entered into pursuant to this section shall be final and nonappealable, except upon a showing of fraud or misrepresentation with respect to a material fact.

(g) Any proceedings undertaken by the board itself pursuant to a settlement as described in this section shall be conducted in a closed session or sessions.

(h) This section shall apply only to surcharge matters in dispute on or after the effective date of the act adding this subdivision.

(i) The Legislature finds that it is essential for fiscal purposes that the settlement program authorized by this section be expeditiously implemented. Accordingly, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any determination, rule, notice, or guideline established or issued by the board in implementing and administering the settlement program authorized by this section.

~~SEC. 26.~~

SEC. 20. Section 41171.5 is added to the Revenue and Taxation Code, to read:

1 41171.5. (a) (1) Beginning on January 1, 2007, the executive
2 director and chief counsel of the board, or their delegates, may
3 compromise any final surcharge liability where the reduction of
4 surcharges is seven thousand five hundred dollars (\$7,500) or
5 less.

6 (2) Except as provided in paragraph (3), the board, upon
7 recommendation by its executive director and chief counsel,
8 jointly, may compromise a final surcharge liability involving a
9 reduction in surcharges in excess of seven thousand five hundred
10 dollars (\$7,500). Any recommendation for approval of an offer in
11 compromise that is not either approved or disapproved within 45
12 days of the submission of the recommendation shall be deemed
13 approved.

14 (3) The board, itself, may by resolution delegate to the
15 executive director and the chief counsel, jointly, the authority to
16 compromise a final surcharge liability in which the reduction of
17 surcharges is in excess of seven thousand five hundred dollars
18 (\$7,500), but less than ten thousand dollars (\$10,000).

19 (b) For purposes of this section, “a final surcharge liability”
20 means any final surcharge liability arising under Part 20
21 (commencing with Section 41001), or related interest, additions
22 to surcharges, penalties, or other amounts assessed under this
23 part.

24 (c) Offers in compromise shall be considered only for
25 liabilities that were generated from a business that has been
26 discontinued or transferred, where the surcharge payer making
27 the offer no longer has a controlling interest or association with
28 the transferred business or has a controlling interest or
29 association with a similar type of business as the transferred or
30 discontinued business.

31 (d) Offers in compromise shall not be considered where the
32 surcharge payer has been convicted of ~~fraud~~ *felony tax evasion*
33 under this part during the liability period.

34 (e) For amounts to be compromised under this section, the
35 following conditions shall exist:

36 (1) The surcharge payer shall establish that:

37 (A) The amount offered in payment is the most that can be
38 expected to be paid or collected from the surcharge payer’s
39 present assets or income.

1 (B) The surcharge payer does not have reasonable prospects of
2 acquiring increased income or assets that would enable the
3 surcharge payer to satisfy a greater amount of the liability than
4 the amount offered, within a reasonable period of time.

5 (2) The board shall have determined that acceptance of the
6 compromise is in the best interest of the state.

7 (f) A determination by the board that it would not be in the
8 best interest of the state to accept an offer in compromise in
9 satisfaction of a final surcharge liability shall not be subject to
10 administrative appeal or judicial review.

11 (g) (1) Offers for liabilities with a fraud or evasion penalty
12 shall require a minimum offer of the unpaid surcharge and fraud
13 or evasion penalty.

14 (2) The minimum offer may be waived if it can be shown that
15 the surcharge payer making the offer was not the person
16 ~~responsible for perpetrating the fraud or evasion, including, but~~
17 ~~not limited to, partnership accounts where the intent to commit~~
18 *responsible for perpetrating the fraud or evasion. This*
19 *authorization to waive only applies to partnership accounts*
20 *where the intent to commit* fraud or evasion can be clearly
21 attributed to a partner of the surcharge payer.

22 (h) When an offer in compromise is either accepted or
23 rejected, or the terms and conditions of a compromise agreement
24 are fulfilled, the board shall notify the surcharge payer in writing.
25 In the event an offer is rejected, the amount posted will either be
26 applied to the liability or refunded, at the discretion of the
27 surcharge payer.

28 (i) When more than one surcharge payer is liable for the debt,
29 such as with spouses or partnerships or other business
30 combinations, including, but not limited to, surcharge payers who
31 are liable through dual determination or successor's liability, the
32 acceptance of an offer in compromise from one liable surcharge
33 ~~payer shall not relieve the other surcharge payers from paying the~~
34 ~~entire liability. However, the amount of the liability shall be~~
35 ~~reduced by the amount of the accepted offer. payer shall reduce~~
36 *the amount of the liability of the other surcharge payers by the*
37 *amount of the accepted offer.*

38 (j) Whenever a compromise of surcharges or penalties or total
39 surcharges and penalties in excess of five hundred dollars (\$500)
40 is approved, there shall be placed on file for at least one year in

1 the office of the executive director of the board a public record
2 with respect to that compromise. The public record shall include
3 all of the following information:

- 4 (1) The name of the surcharge payer.
- 5 (2) The amount of unpaid surcharges and related penalties,
6 additions to surcharges, interest, or other amounts involved.
- 7 (3) The amount offered.
- 8 (4) A summary of the reason why the compromise is in the
9 best interest of the state.

10 The public record shall not include any information that relates
11 to any trade secrets, patent, process, style of work, apparatus,
12 business secret, or organizational structure, that if disclosed,
13 would adversely affect the surcharge payer or violate the
14 confidentiality provisions of Section 41131. No list shall be
15 prepared and no releases distributed by the board in connection
16 with these statements.

17 (k) Any compromise made under this section may be
18 rescinded, all compromised liabilities may be reestablished,
19 without regard to any statute of limitations that otherwise may be
20 applicable, and no portion of the amount offered in compromise
21 refunded, if either of the following occurs:

22 (1) The board determines that any person did any of the
23 following acts regarding the making of the offer:

24 (A) Concealed from the board any property belonging to the
25 estate of any surcharge payer or other person liable for the
26 surcharge.

27 (B) Received, withheld, destroyed, mutilated, or falsified any
28 book, document, or record or made any false statement, relating
29 to the estate or financial condition of the surcharge payer or other
30 person liable for the surcharge.

31 (2) The surcharge payer fails to comply with any of the terms
32 and conditions relative to the offer.

33 (l) Any person who, in connection with any offer or
34 compromise under this section, or offer of that compromise to
35 enter into that agreement, willfully does either of the following
36 shall be guilty of a felony and, upon conviction, shall be fined
37 not more than fifty thousand dollars (\$50,000) or imprisoned not
38 more than three years, or both, together with the costs of
39 investigation and prosecution:

1 (1) Conceals from any officer or employee of this state any
2 property belonging to the estate of a surcharge payer or other
3 person liable in respect of the surcharge.

4 (2) Receives, withholds, destroys, mutilates, or falsifies any
5 book, document, or record, or makes any false statement, relating
6 to the estate or financial condition of the surcharge payer or other
7 person liable in respect of the surcharge.

8 (m) For purposes of this section, “person” means the surcharge
9 payer, any member of the surcharge payer’s family, any
10 corporation, agent, fiduciary, or representative of, or any other
11 individual or entity acting on behalf of, the surcharge payer, or
12 any other corporation or entity owned or controlled by the
13 surcharge payer, directly or indirectly, or that owns or controls
14 the surcharge payer, directly or indirectly.

15 ~~SEC. 27. Section 43170 of the Revenue and Taxation Code is~~
16 ~~amended to read:~~

17 ~~43170. (a) Any person whose estimated tax liability under~~
18 ~~this part averages ten thousand dollars (\$10,000) or more per~~
19 ~~month, as determined by the board pursuant to methods of~~
20 ~~calculation prescribed by the board, shall remit amounts due by~~
21 ~~an electronic funds transfer under procedures prescribed by the~~
22 ~~board.~~

23 ~~(b) Any person whose estimated tax liability under this part~~
24 ~~averages less than ten thousand dollars (\$10,000) per month may~~
25 ~~elect to remit amounts due by electronic funds transfer with the~~
26 ~~approval of the board.~~

27 ~~(c) Any person remitting amounts due pursuant to subdivision~~
28 ~~(a) or (b) shall perform electronic funds transfer in compliance~~
29 ~~with the due dates set forth in Article 1 (commencing with~~
30 ~~Section 43151). Payment is deemed complete on the date the~~
31 ~~electronic funds transfer is initiated if settlement to the state’s~~
32 ~~demand account occurs on or before the banking day following~~
33 ~~the date the transfer is initiated. If settlement to the state’s~~
34 ~~demand account does not occur on or before the banking day~~
35 ~~following the date the transfer is initiated, payment is deemed to~~
36 ~~occur on the date settlement occurs.~~

37 ~~(d) Any person remitting taxes by electronic funds transfer~~
38 ~~shall, on or before the due date of the remittance, file a return for~~
39 ~~the preceding reporting period in the form and manner prescribed~~
40 ~~by the board. Any person who fails to timely file the required~~

1 ~~return shall pay a penalty of 10 percent of the amount of taxes,~~
2 ~~exclusive of prepayments, with respect to the period for which~~
3 ~~the return is required.~~

4 ~~(e) Any person required to remit taxes pursuant to this article~~
5 ~~who remits those taxes by means other than appropriate~~
6 ~~electronic funds transfer shall pay a penalty of 10 percent of the~~
7 ~~taxes incorrectly remitted.~~

8 ~~(f) Any person who fails to pay any tax to the state or any~~
9 ~~amount of tax required to be collected and paid to the state,~~
10 ~~except amounts of determinations made by the board under~~
11 ~~Article 2 (commencing with Section 43201), within the time~~
12 ~~required shall pay a penalty of 10 percent of the tax or amount of~~
13 ~~tax, in addition to the tax or amount of tax, plus interest at the~~
14 ~~modified adjusted rate per month, or fraction thereof, established~~
15 ~~pursuant to Section 6591.5, from the date on which the tax or~~
16 ~~amount of tax required to be collected became due and payable to~~
17 ~~the state until the date of payment.~~

18 ~~(g) In determining whether a person's estimated tax liability~~
19 ~~averages ten thousand dollars (\$10,000) or more per month, the~~
20 ~~board may consider tax returns filed pursuant to this part and any~~
21 ~~other information in the board's possession.~~

22 ~~(h) The penalties imposed by subdivisions (d), (e), and (f)~~
23 ~~shall be limited to a maximum of 10 percent of the taxes due for~~
24 ~~any one return or prepayment. Any person remitting taxes by~~
25 ~~electronic funds transfer shall be subject to the penalties under~~
26 ~~this section and not Section 43155.~~

27 ~~(i) The board shall promulgate regulations pursuant to Chapter~~
28 ~~3.5 (commencing with Section 11340) of Part 1 of Division 3 of~~
29 ~~Title 2 of the Government Code for purposes of implementing~~
30 ~~this section.~~

31 ~~SEC. 28.~~

32 *SEC. 21.* Section 43452.2 is added to the Revenue and
33 Taxation Code, to read:

34 43452.2. Notwithstanding Section 43452, a refund of an
35 overpayment of any tax, penalty, or interest collected by the
36 board by means of levy, through the use of liens, or by other
37 enforcement procedures, shall be approved if a claim for a refund
38 is filed within three years of the date of an overpayment.

1 ~~SEC. 29.~~

2 *SEC. 22.* Section 43522 of the Revenue and Taxation Code is
3 amended to read:

4 43522. (a) It is the intent of the Legislature that the State
5 Board of Equalization, its staff, and the Attorney General pursue
6 settlements as authorized under this section with respect to civil
7 tax matters in dispute that are the subject of protests, appeals, or
8 refund claims, consistent with a reasonable evaluation of the
9 costs and risks associated with litigation of these matters.

10 (b) (1) Except as provided in paragraph (3) and subject to
11 paragraph (2), the executive director or chief counsel, if
12 authorized by the executive director, of the board may
13 recommend to the State Board of Equalization, itself, a
14 settlement of any civil tax matter in dispute which arises under
15 Section 105190 or 105310 of the Health and Safety Code.

16 (2) No recommendation of settlement shall be submitted to the
17 board, itself, unless and until that recommendation has been
18 submitted by the executive director or chief counsel to the
19 Attorney General. Within 30 days of receiving that
20 recommendation, the Attorney General shall review the
21 recommendation and advise, in writing, the executive director or
22 chief counsel of the board of his or her conclusions as to whether
23 the recommendation is reasonable from an overall perspective.
24 The executive director or chief counsel shall, with each
25 recommendation of settlement submitted to the board, itself, also
26 submit the Attorney General's written conclusions obtained
27 pursuant to this paragraph.

28 (3) A settlement of any civil tax matter in dispute involving a
29 reduction of tax or penalties in settlement, the total of which
30 reduction of tax and penalties in settlement does not exceed five
31 thousand dollars (\$5,000), may be approved by the executive
32 director and chief counsel, jointly. The executive director shall
33 notify the board, itself, of any settlement approved pursuant to
34 this paragraph.

35 (c) Whenever a reduction of tax, or penalties, or total tax and
36 penalties in settlement in excess of five hundred dollars (\$500) is
37 approved pursuant to this section, there shall be placed on file,
38 for at least one year, in the office of the executive director of the
39 board a public record with respect to that settlement. The public
40 record shall include all of the following information:

1 (1) The name or names of the taxpayers who are parties to the
2 settlement.

3 (2) The total amount in dispute.

4 (3) The amount agreed to pursuant to the settlement.

5 (4) A summary of the reasons why the settlement is in the best
6 interests of the State of California.

7 (5) For any settlement approved by the board, itself, the
8 Attorney General's conclusion as to whether the recommendation
9 of settlement was reasonable from an overall perspective.

10 The public record shall not include any information that relates
11 to any trade secret, patent, process, style of work, apparatus,
12 business secret, or organizational structure that, if disclosed,
13 would adversely affect the taxpayer or the national defense.

14 (d) The members of the State Board of Equalization shall not
15 participate in the settlement of tax matters pursuant to this
16 section, except as provided in subdivision (e).

17 (e) (1) Any recommendation for settlement shall be approved
18 or disapproved by the board, itself, within 45 days of the
19 submission of that recommendation to the board. Any
20 recommendation for settlement that is not either approved or
21 disapproved by the board, itself, within 45 days of the
22 submission of that recommendation shall be deemed approved.
23 Upon approval of a recommendation for settlement, the matter
24 shall be referred back to the executive director or chief counsel in
25 accordance with the decision of the board.

26 (2) Disapproval of a recommendation for settlement shall be
27 made only by a majority vote of the board. Where the board
28 disapproves a recommendation for settlement, the matter shall be
29 remanded to board staff for further negotiation, and may be
30 resubmitted to the board, in the same manner and subject to the
31 same requirements as the initial submission, at the discretion of
32 the executive director or chief counsel.

33 (f) All settlements entered into pursuant to this section shall be
34 final and nonappealable, except upon a showing of fraud or
35 misrepresentation with respect to a material fact.

36 (g) Any proceedings undertaken by the board itself pursuant to
37 a settlement as described in this section shall be conducted in a
38 closed session or sessions. Except as provided in subdivision (c),
39 any settlement considered or entered into pursuant to this section

1 shall constitute confidential tax information for purposes of
2 Section 43651.

3 (h) This section shall apply only to civil tax matters in dispute
4 on or after the effective date of the act adding this subdivision.

5 (i) The Legislature finds that it is essential for fiscal purposes
6 that the settlement program authorized by this section be
7 expeditiously implemented. Accordingly, Chapter 3.5
8 (commencing with Section 11340) of Part 1 of Division 3 of Title
9 2 of the Government Code shall not apply to any determination,
10 rule, notice, or guideline established or issued by the board in
11 implementing and administering the settlement program
12 authorized by this section.

13 ~~SEC. 30.~~

14 *SEC. 23.* Section 43522.5 is added to the Revenue and
15 Taxation Code, to read:

16 43522.5. (a) (1) Beginning on January 1, 2007, the executive
17 director and chief counsel of the board, or their delegates, may
18 compromise any final tax liability where the reduction of tax is
19 seven thousand five hundred dollars (\$7,500) or less.

20 (2) Except as provided in paragraph (3), the board, upon
21 recommendation by its executive director and chief counsel,
22 jointly, may compromise a final tax liability involving a
23 reduction in tax in excess of seven thousand five hundred dollars
24 (\$7,500). Any recommendation for approval of an offer in
25 compromise that is not either approved or disapproved within 45
26 days of the submission of the recommendation shall be deemed
27 approved.

28 (3) The board, itself, may by resolution delegate to the
29 executive director and the chief counsel, jointly, the authority to
30 compromise a final tax liability in which the reduction of tax is in
31 excess of seven thousand five hundred dollars (\$7,500), but less
32 than ten thousand dollars (\$10,000).

33 (b) For purposes of this section, “a final tax liability” means
34 any final tax liability arising under Part 22 (commencing with
35 Section 43001), or related interest, additions to tax, penalties, or
36 other amounts assessed under this part.

37 (c) Offers in compromise shall be considered only for
38 liabilities that were generated from a business that has been
39 discontinued or transferred, where the taxpayer making the offer
40 no longer has a controlling interest or association with the

1 transferred business or has a controlling interest or association
2 with a similar type of business as the transferred or discontinued
3 business.

4 (d) Offers in compromise shall not be considered where the
5 taxpayer has been convicted of ~~fraud~~ *felony tax evasion* under
6 this part during the liability period.

7 (e) For amounts to be compromised under this section, the
8 following conditions shall exist:

9 (1) The taxpayer shall establish that:

10 (A) The amount offered in payment is the most that can be
11 expected to be paid or collected from the taxpayer's present
12 assets or income.

13 (B) The taxpayer does not have reasonable prospects of
14 acquiring increased income or assets that would enable the
15 taxpayer to satisfy a greater amount of the liability than the
16 amount offered, within a reasonable period of time.

17 (2) The board shall have determined that acceptance of the
18 compromise is in the best interest of the state.

19 (f) A determination by the board that it would not be in the
20 best interest of the state to accept an offer in compromise in
21 satisfaction of a final tax liability shall not be subject to
22 administrative appeal or judicial review.

23 (g) (1) Offers for liabilities with a fraud or evasion penalty
24 shall require a minimum offer of the unpaid tax and fraud or
25 evasion penalty.

26 (2) The minimum offer may be waived if it can be shown that
27 the taxpayer making the offer was not the person responsible for
28 perpetrating the fraud or ~~evasion, including, but not limited to,~~
29 *evasion. This authorization to waive only applies to* partnership
30 accounts where the intent to commit fraud or evasion can be
31 clearly attributed to a partner of the taxpayer.

32 (h) When an offer in compromise is either accepted or
33 rejected, or the terms and conditions of a compromise agreement
34 are fulfilled, the board shall notify the taxpayer in writing. In the
35 event an offer is rejected, the amount posted will either be
36 applied to the liability or refunded, at the discretion of the
37 taxpayer.

38 (i) When more than one taxpayer is liable for the debt, such as
39 with spouses or partnerships or other business combinations,
40 including, but not limited to, taxpayers who are liable through

1 dual determination or successor's liability, the acceptance of an
2 offer in compromise from one liable taxpayer shall ~~not relieve~~
3 ~~the other taxpayers from paying the entire liability. However, the~~
4 ~~amount of the liability shall be reduced by the amount of the~~
5 *reduce the amount of the liability of the other taxpayers by the*
6 *amount of the accepted offer.*

7 (j) Whenever a compromise of tax or penalties or total tax and
8 penalties in excess of five hundred dollars (\$500) is approved,
9 there shall be placed on file for at least one year in the office of
10 the executive director of the board a public record with respect to
11 that compromise. The public record shall include all of the
12 following information:

13 (1) The name of the taxpayer.

14 (2) The amount of unpaid tax and related penalties, additions
15 to tax, interest, or other amounts involved.

16 (3) The amount offered.

17 (4) A summary of the reason why the compromise is in the
18 best interest of the state.

19 The public record shall not include any information that relates
20 to any trade secrets, patent, process, style of work, apparatus,
21 business secret, or organizational structure, that if disclosed,
22 would adversely affect the taxpayer or violate the confidentiality
23 provisions of Section 43651. No list shall be prepared and no
24 releases distributed by the board in connection with these
25 statements.

26 (k) Any compromise made under this section may be
27 rescinded, all compromised liabilities may be reestablished,
28 without regard to any statute of limitations that otherwise may be
29 applicable, and no portion of the amount offered in compromise
30 refunded, if either of the following occurs:

31 (1) The board determines that any person did any of the
32 following acts regarding the making of the offer:

33 (A) Concealed from the board any property belonging to the
34 estate of any taxpayer or other person liable for the tax.

35 (B) Received, withheld, destroyed, mutilated, or falsified any
36 book, document, or record or made any false statement, relating
37 to the estate or financial condition of the taxpayer or other person
38 liable for the tax.

39 (2) The taxpayer fails to comply with any of the terms and
40 conditions relative to the offer.

1 (l) Any person who, in connection with any offer or
2 compromise under this section, or offer of that compromise to
3 enter into that agreement, willfully does either of the following
4 shall be guilty of a felony and, upon conviction, shall be fined
5 not more than fifty thousand dollars (\$50,000) or imprisoned not
6 more than three years, or both, together with the costs of
7 investigation and prosecution:

8 (1) Conceals from any officer or employee of this state any
9 property belonging to the estate of a taxpayer or other person
10 liable in respect of the tax.

11 (2) Receives, withholds, destroys, mutilates, or falsifies any
12 book, document, or record, or makes any false statement, relating
13 to the estate or financial condition of the taxpayer or other person
14 liable in respect of the tax.

15 (m) For purposes of this section, “person” means the taxpayer,
16 any member of the taxpayer’s family, any corporation, agent,
17 fiduciary, or representative of, or any other individual or entity
18 acting on behalf of, the taxpayer, or any other corporation or
19 entity owned or controlled by the taxpayer, directly or indirectly,
20 or that owns or controls the taxpayer, directly or indirectly.

21 ~~SEC. 31. Section 45160 of the Revenue and Taxation Code is~~
22 ~~amended to read:~~

23 ~~45160. (a) Any person whose estimated fee liability under~~
24 ~~this part averages ten thousand dollars (\$10,000) or more per~~
25 ~~month, as determined by the board pursuant to methods of~~
26 ~~calculation prescribed by the board, shall remit amounts due by~~
27 ~~an electronic funds transfer under procedures prescribed by the~~
28 ~~board.~~

29 ~~(b) Any person whose estimated fee liability under this part~~
30 ~~averages less than ten thousand dollars (\$10,000) per month may~~
31 ~~elect to remit amounts due by electronic funds transfer with the~~
32 ~~approval of the board.~~

33 ~~(c) Any person remitting amounts due pursuant to subdivision~~
34 ~~(a) or (b) shall perform electronic funds transfer in compliance~~
35 ~~with the due dates set forth in Article 1 (commencing with~~
36 ~~Section 45151). Payment is deemed complete on the date the~~
37 ~~electronic funds transfer is initiated if settlement to the state’s~~
38 ~~demand account occurs on or before the banking day following~~
39 ~~the date the transfer is initiated. If settlement to the state’s~~
40 ~~demand account does not occur on or before the banking day~~

1 following the date the transfer is initiated, payment is deemed to
2 occur on the date settlement occurs.

3 ~~(d) Any person remitting fees by electronic funds transfer~~
4 ~~shall, on or before the due date of the remittance, file a return for~~
5 ~~the preceding reporting period in the form and manner prescribed~~
6 ~~by the board. Any person who fails to timely file the required~~
7 ~~return shall pay a penalty of 10 percent of the amount of fees~~
8 ~~with respect to the period for which the return is required.~~

9 ~~(e) Any person required to remit fees pursuant to this article~~
10 ~~who remits those fees by means other than appropriate electronic~~
11 ~~funds transfer shall pay a penalty of 10 percent of the fees~~
12 ~~incorrectly remitted.~~

13 ~~(f) Any person who fails to pay any fee to the state or any~~
14 ~~amount of fee required to be collected and paid to the state,~~
15 ~~except amounts of determinations made by the board under~~
16 ~~Article 2 (commencing with Section 45201), within the time~~
17 ~~required shall pay a penalty of 10 percent of the fee or amount of~~
18 ~~fee, in addition to the fee or amount of fee, plus interest at the~~
19 ~~modified adjusted rate per month, or fraction thereof, established~~
20 ~~pursuant to Section 6591.5, from the date on which the fee~~
21 ~~became due and payable to the state until the date of payment.~~

22 ~~(g) In determining whether a person's estimated fee liability~~
23 ~~averages ten thousand dollars (\$10,000) or more per month, the~~
24 ~~board may consider returns filed pursuant to this part and any~~
25 ~~other information in the board's possession.~~

26 ~~(h) The penalties imposed by subdivisions (d), (e), and (f)~~
27 ~~shall be limited to a maximum of 10 percent of the fees due for~~
28 ~~any one return. Any person remitting fees by electronic funds~~
29 ~~transfer shall be subject to the penalties under this section and not~~
30 ~~Section 45153.~~

31 ~~(i) The board shall promulgate regulations pursuant to Chapter~~
32 ~~3.5 (commencing with Section 11340) of Part 1 of Division 3 of~~
33 ~~Title 2 of the Government Code for purposes of implementing~~
34 ~~this section.~~

35 ~~SEC. 32.~~

36 *SEC. 24.* Section 45652.2 is added to the Revenue and
37 Taxation Code, to read:

38 45652.2. Notwithstanding Section 45652, a refund of an
39 overpayment of any fee, penalty, or interest collected by the
40 board by means of levy, through the use of liens, or by other

1 enforcement procedures, shall be approved if a claim for a refund
2 is filed within three years of the date of an overpayment.

3 ~~SEC. 33.~~

4 *SEC. 25.* Section 45867 of the Revenue and Taxation Code is
5 amended to read:

6 45867. (a) It is the intent of the Legislature that the State
7 Board of Equalization, its staff, and the Attorney General pursue
8 settlements as authorized under this section with respect to fee
9 matters in dispute that are the subject of protests, appeals, or
10 refund claims, consistent with a reasonable evaluation of the
11 costs and risks associated with litigation of these matters.

12 (b) (1) Except as provided in paragraph (3) and subject to
13 paragraph (2), the executive director or chief counsel, if
14 authorized by the executive director, of the board may
15 recommend to the State Board of Equalization, itself, a
16 settlement of any fee matter in dispute.

17 (2) No recommendation of settlement shall be submitted to the
18 board, itself, unless and until that recommendation has been
19 submitted by the executive director or chief counsel to the
20 Attorney General. Within 30 days of receiving that
21 recommendation, the Attorney General shall review the
22 recommendation and advise, in writing, the executive director or
23 chief counsel of the board of his or her conclusions as to whether
24 the recommendation is reasonable from an overall perspective.
25 The executive director or chief counsel shall, with each
26 recommendation of settlement submitted to the board, itself, also
27 submit the Attorney General's written conclusions obtained
28 pursuant to this paragraph.

29 (3) A settlement of any civil fee matter in dispute involving a
30 reduction of fee or penalties in settlement, the total of which
31 reduction of fee and penalties in settlement does not exceed five
32 thousand dollars (\$5,000), may be approved by the executive
33 director and chief counsel, jointly. The executive director shall
34 notify the board, itself, of any settlement approved pursuant to
35 this paragraph.

36 (c) Whenever a reduction of fees, or penalties, or total fees and
37 penalties in settlement in excess of five hundred dollars (\$500) is
38 approved pursuant to this section, there shall be placed on file,
39 for at least one year, in the office of the executive director of the

1 board a public record with respect to that settlement. The public
2 record shall include all of the following information:

3 (1) The name or names of the feepayers who are parties to the
4 settlement.

5 (2) The total amount in dispute.

6 (3) The amount agreed to pursuant to the settlement.

7 (4) A summary of the reasons why the settlement is in the best
8 interests of the State of California.

9 (5) For any settlement approved by the board, itself, the
10 Attorney General's conclusion as to whether the recommendation
11 of settlement was reasonable from an overall perspective.

12 The public record shall not include any information that relates
13 to any trade secret, patent, process, style of work, apparatus,
14 business secret, or organizational structure that, if disclosed,
15 would adversely affect the feepayer or the national defense.

16 (d) The members of the State Board of Equalization shall not
17 participate in the settlement of fee matters pursuant to this
18 section, except as provided in subdivision (e).

19 (e) (1) Any recommendation for settlement shall be approved
20 or disapproved by the board, itself, within 45 days of the
21 submission of that recommendation to the board. Any
22 recommendation for settlement that is not either approved or
23 disapproved by the board, itself, within 45 days of the
24 submission of that recommendation shall be deemed approved.
25 Upon approval of a recommendation for settlement, the matter
26 shall be referred back to the executive director or chief counsel in
27 accordance with the decision of the board.

28 (2) Disapproval of a recommendation for settlement shall be
29 made only by a majority vote of the board. Where the board
30 disapproves a recommendation for settlement, the matter shall be
31 remanded to board staff for further negotiation, and may be
32 resubmitted to the board, in the same manner and subject to the
33 same requirements as the initial submission, at the discretion of
34 the executive director or chief counsel.

35 (f) All settlements entered into pursuant to this section shall be
36 final and nonappealable, except upon a showing of fraud or
37 misrepresentation with respect to a material fact.

38 (g) Any proceedings undertaken by the board itself pursuant to
39 a settlement as described in this section shall be conducted in a
40 closed session or sessions. Except as provided in subdivision (c),

1 any settlement considered or entered into pursuant to this section
2 shall constitute confidential information for purposes of Section
3 45982.

4 (h) This section shall apply only to fee matters in dispute on or
5 after the effective date of the act adding this subdivision.

6 (i) The Legislature finds that it is essential for fiscal purposes
7 that the settlement program authorized by this section be
8 expeditiously implemented. Accordingly, Chapter 3.5
9 (commencing with Section 11340) of Part 1 of Division 3 of Title
10 2 of the Government Code shall not apply to any determination,
11 rule, notice, or guideline established or issued by the board in
12 implementing and administering the settlement program
13 authorized by this section.

14 ~~SEC. 34.~~

15 *SEC. 26.* Section 45867.5 is added to the Revenue and
16 Taxation Code, to read:

17 45867.5. (a) (1) Beginning on January 1, 2007, the executive
18 director and chief counsel of the board, or their delegates, may
19 compromise any final fee liability where the reduction of fees is
20 seven thousand five hundred dollars (\$7,500) or less.

21 (2) Except as provided in paragraph (3), the board, upon
22 recommendation by its executive director and chief counsel,
23 jointly, may compromise a final fee liability involving a
24 reduction in fees in excess of seven thousand five hundred
25 dollars (\$7,500). Any recommendation for approval of an offer in
26 compromise that is not either approved or disapproved within 45
27 days of the submission of the recommendation shall be deemed
28 approved.

29 (3) The board, itself, may by resolution delegate to the
30 executive director and the chief counsel, jointly, the authority to
31 compromise a final fee liability in which the reduction of fees is
32 in excess of seven thousand five hundred dollars (\$7,500), but
33 less than ten thousand dollars (\$10,000).

34 (b) For purposes of this section, “a final fee liability” means
35 any final fee liability arising under Part 23 (commencing with
36 Section 45001), or related interest, additions to fees, penalties, or
37 other amounts assessed under this part.

38 (c) Offers in compromise shall be considered only ~~from~~
39 ~~feepayers who had no knowledge of the fee at the time the fee~~
40 ~~activity occurred or is no longer in a position to generate~~

1 ~~additional liability under the fee program whose liability will be~~
2 ~~compromised under this part. for liabilities that were generated~~
3 ~~from a business that has been discontinued or transferred, where~~
4 ~~the feepayer making the offer no longer has a controlling interest~~
5 ~~or association with the transferred business or has a controlling~~
6 ~~interest or association with a similar type of business as the~~
7 ~~transferred or discontinued business.~~

8 (d) Offers in compromise shall not be considered where the
9 ~~fraud has been convicted of criminal fraud under this part during~~
10 ~~feepayer has been convicted of felony tax evasion under this part~~
11 ~~during the liability period.~~

12 (e) For amounts to be compromised under this section, the
13 following conditions shall exist:

14 (1) The feepayer shall establish that:

15 (A) The amount offered in payment is the most that can be
16 expected to be paid or collected from the feepayer's present
17 assets or income.

18 (B) The feepayer does not have reasonable prospects of
19 acquiring increased income or assets that would enable the
20 feepayer to satisfy a greater amount of the liability than the
21 amount offered, within a reasonable period of time.

22 (2) The board shall have determined that acceptance of the
23 compromise is in the best interest of the state.

24 (f) A determination by the board that it would not be in the
25 best interest of the state to accept an offer in compromise in
26 satisfaction of a final fee liability shall not be subject to
27 administrative appeal or judicial review.

28 (g) (1) Offers for liabilities with a fraud or evasion penalty
29 shall require a minimum offer of the unpaid fee and fraud or
30 evasion penalty.

31 (2) The minimum offer may be waived if it can be shown that
32 the feepayer making the offer was not the person responsible for
33 ~~perpetrating the fraud or evasion, including, but not limited to,~~
34 ~~evasion. This authorization to waive only applies to partnership~~
35 ~~accounts where the intent to commit fraud or evasion can be~~
36 ~~clearly attributed to a partner of the feepayer.~~

37 (h) When an offer in compromise is either accepted or
38 rejected, or the terms and conditions of a compromise agreement
39 are fulfilled, the board shall notify the feepayer in writing. In the
40 event an offer is rejected, the amount posted will either be

1 applied to the liability or refunded, at the discretion of the
2 feepayer.

3 (i) When more than one feepayer is liable for the debt, such as
4 with spouses or partnerships or other business combinations,
5 including, but not limited to, feepayers who are liable through
6 dual determination or successor's liability, the acceptance of an
7 offer in compromise from one liable feepayer shall ~~not relieve~~
8 ~~the other feepayers from paying the entire liability. However, the~~
9 ~~amount of the liability shall be reduced by the amount of the~~
10 *reduce the amount of the liability of the other feepayers by the*
11 *amount of the accepted offer.*

12 (j) Whenever a compromise of fees or penalties or total fees
13 and penalties in excess of five hundred dollars (\$500) is
14 approved, there shall be placed on file for at least one year in the
15 office of the executive director of the board a public record with
16 respect to that compromise. The public record shall include all of
17 the following information:

18 (1) The name of the feepayer.

19 (2) The amount of unpaid fees and related penalties, additions
20 to fee, interest, or other amounts involved.

21 (3) The amount offered.

22 (4) A summary of the reason why the compromise is in the
23 best interest of the state.

24 The public record shall not include any information that relates
25 to any trade secrets, patent, process, style of work, apparatus,
26 business secret, or organizational structure, that if disclosed,
27 would adversely affect the feepayer or violate the confidentiality
28 provisions of Section 45855. No list shall be prepared and no
29 releases distributed by the board in connection with these
30 statements.

31 (k) Any compromise made under this section may be
32 rescinded, all compromised liabilities may be reestablished,
33 without regard to any statute of limitations that otherwise may be
34 applicable, and no portion of the amount offered in compromise
35 refunded, if either of the following occurs:

36 (1) The board determines that any person did any of the
37 following acts regarding the making of the offer:

38 (A) Concealed from the board any property belonging to the
39 estate of any feepayer or other person liable for the fee.

(B) Received, withheld, destroyed, mutilated, or falsified any book, document, or record or made any false statement, relating to the estate or financial condition of the feepayer or other person liable for the fee.

(2) The feepayer fails to comply with any of the terms and conditions relative to the offer.

(l) Any person who, in connection with any offer or compromise under this section, or offer of that compromise to enter into that agreement, willfully does either of the following shall be guilty of a felony and, upon conviction, shall be fined not more than fifty thousand dollars (\$50,000) or imprisoned not more than three years, or both, together with the costs of investigation and prosecution:

(1) Conceals from any officer or employee of this state any property belonging to the estate of a feepayer or other person liable in respect of the fee.

(2) Receives, withholds, destroys, mutilates, or falsifies any book, document, or record, or makes any false statement, relating to the estate or financial condition of the feepayer or other person liable in respect of the fee.

(m) For purposes of this section, “person” means the feepayer, any member of the feepayer’s family, any corporation, agent, fiduciary, or representative of, or any other individual or entity acting on behalf of, the feepayer, or any other corporation or entity owned or controlled by the feepayer, directly or indirectly, or that owns or controls the feepayer, directly or indirectly.

~~SEC. 35. Section 46160 of the Revenue and Taxation Code is amended to read:~~

~~46160. (a) Any person whose estimated fee liability under this part averages ten thousand dollars (\$10,000) or more per month, as determined by the board pursuant to methods of calculation prescribed by the board, shall remit amounts due by an electronic funds transfer under procedures prescribed by the board.~~

~~(b) Any person whose estimated fee liability under this part averages less than ten thousand dollars (\$10,000) per month may elect to remit amounts due by electronic funds transfer with the approval of the board.~~

~~(c) Any person remitting amounts due pursuant to subdivision (a) or (b) shall perform electronic funds transfer in compliance~~

1 with the due dates set forth in Article 1 (commencing with
2 Section 46151). Payment is deemed complete on the date the
3 electronic funds transfer is initiated if settlement to the state's
4 demand account occurs on or before the banking day following
5 the date the transfer is initiated. If settlement to the state's
6 demand account does not occur on or before the banking day
7 following the date the transfer is initiated, payment is deemed to
8 occur on the date settlement occurs.

9 (d) Any person remitting fees by electronic funds transfer
10 shall, on or before the due date of the remittance, file a return for
11 the preceding reporting period in the form and manner prescribed
12 by the board. Any person who fails to timely file the required
13 return shall pay a penalty of 10 percent of the amount of fees
14 with respect to the period for which the return is required.

15 (e) Any person required to remit fees pursuant to this article
16 who remits those fees by means other than appropriate electronic
17 funds transfer shall pay a penalty of 10 percent of the fees
18 incorrectly remitted.

19 (f) Any person who fails to pay any fee to the state or any
20 amount of fee required to be collected and paid to the state,
21 except amounts of determinations made by the board under
22 Article 2 (commencing with Section 46201) or Article 3,
23 (commencing with Section 46251), within the time required shall
24 pay a penalty of 10 percent of the fee or amount of fee, in
25 addition to the fee or amount of fee, plus interest at the modified
26 adjusted rate per month, or fraction thereof, established pursuant
27 to Section 6591.5, from the date on which the fee or the amount
28 of fee required to be collected became due and payable to the
29 state until the date of payment.

30 (g) In determining whether a person's estimated fee liability
31 averages ten thousand dollars (\$10,000) or more per month, the
32 board may consider returns filed pursuant to this part and any
33 other information in the board's possession.

34 (h) The penalties imposed by subdivisions (d), (e), and (f)
35 shall be limited to a maximum of 10 percent of the fees due for
36 any one return. Any person remitting fees by electronic funds
37 transfer shall be subject to the penalties under this section and not
38 Section 46154.

39 (i) The board shall promulgate regulations pursuant to Chapter
40 3.5 (commencing with Section 11340) of Part 1 of Division 3 of

1 ~~Title 2 of the Government Code for purposes of implementing~~
2 ~~this section.~~

3 ~~SEC. 36.~~

4 *SEC. 27.* Section 46502.2 is added to the Revenue and
5 Taxation Code, to read:

6 46502.2. Notwithstanding Section 46502, a refund of an
7 overpayment of any fee, penalty, or interest collected by the
8 board by means of levy, through the use of liens, or by other
9 enforcement procedures, shall be approved if a claim for a refund
10 is filed within three years of the date of an overpayment.

11 ~~SEC. 37.~~

12 *SEC. 28.* Section 46622 of the Revenue and Taxation Code is
13 amended to read:

14 46622. (a) It is the intent of the Legislature that the State
15 Board of Equalization, its staff, and the Attorney General pursue
16 settlements as authorized under this section with respect to fee
17 matters in dispute that are the subject of protests, appeals, or
18 refund claims, consistent with a reasonable evaluation of the
19 costs and risks associated with litigation of these matters.

20 (b) (1) Except as provided in paragraph (3) and subject to
21 paragraph (2), the executive director or chief counsel, if
22 authorized by the executive director, of the board may
23 recommend to the State Board of Equalization, itself, a
24 settlement of any civil fee matter in dispute.

25 (2) No recommendation of settlement shall be submitted to the
26 board, itself, unless and until that recommendation has been
27 submitted by the executive director or chief counsel to the
28 Attorney General. Within 30 days of receiving that
29 recommendation, the Attorney General shall review the
30 recommendation and advise, in writing, the executive director or
31 chief counsel of the board of his or her conclusions as to whether
32 the recommendation is reasonable from an overall perspective.
33 The executive director or chief counsel shall, with each
34 recommendation of settlement submitted to the board, itself, also
35 submit the Attorney General's written conclusions obtained
36 pursuant to this paragraph.

37 (3) A settlement of any civil fee matter in dispute involving a
38 reduction of fee or penalties in settlement, the total of which
39 reduction of fee and penalties in settlement does not exceed five
40 thousand dollars (\$5,000), may be approved by the executive

1 director and chief counsel, jointly. The executive director shall
2 notify the board, itself, of any settlement approved pursuant to
3 this paragraph.

4 (c) Whenever a reduction of fee, or penalties, or total fees and
5 penalties in settlement in excess of five hundred dollars (\$500) is
6 approved pursuant to this section, there shall be placed on file,
7 for at least one year, in the office of the executive director of the
8 board a public record with respect to that settlement. The public
9 record shall include all of the following information:

10 (1) The name or names of the feepayers who are parties to the
11 settlement.

12 (2) The total amount in dispute.

13 (3) The amount agreed to pursuant to the settlement.

14 (4) A summary of the reasons why the settlement is in the best
15 interests of the State of California.

16 (5) For any settlement approved by the board, itself, the
17 Attorney General's conclusion as to whether the recommendation
18 of settlement was reasonable from an overall perspective.

19 The public record shall not include any information that relates
20 to any trade secret, patent, process, style of work, apparatus,
21 business secret, or organizational structure that, if disclosed,
22 would adversely affect the feepayer or the national defense.

23 (d) The members of the State Board of Equalization shall not
24 participate in the settlement of fee matters pursuant to this
25 section, except as provided in subdivision (e).

26 (e) (1) Any recommendation of settlement shall be approved
27 or disapproved by the board, itself, within 45 days of the
28 submission of that recommendation to the board. Any
29 recommendation for settlement that is not either approved or
30 disapproved by the board, itself, within 45 days of the
31 submission of that recommendation shall be deemed approved.
32 Upon approval of a recommendation for settlement, the matter
33 shall be referred back to the executive director or chief counsel in
34 accordance with the decision of the board.

35 (2) Disapproval of a recommendation for settlement shall be
36 made only by a majority vote of the board. Where the board
37 disapproves a recommendation for settlement, the matter shall be
38 remanded to board staff for further negotiation, and may be
39 resubmitted to the board, in the same manner and subject to the

1 same requirements as the initial submission, at the discretion of
2 the executive director or chief counsel.

3 (f) All settlements entered into pursuant to this section shall be
4 final and nonappealable, except upon a showing of fraud or
5 misrepresentation with respect to a material fact.

6 (g) Any proceedings undertaken by the board itself pursuant to
7 a settlement as described in this section shall be conducted in a
8 closed session or sessions.

9 (h) This section shall apply only to fee matters in dispute on or
10 after the effective date of the act adding this subdivision.

11 (i) The Legislature finds that it is essential for fiscal purposes
12 that the settlement program authorized by this section be
13 expeditiously implemented. Accordingly, Chapter 3.5
14 (commencing with Section 11340) of Part 1 of Division 3 of Title
15 2 of the Government Code shall not apply to any determination,
16 rule, notice, or guideline established or issued by the board in
17 implementing and administering the settlement program
18 authorized by this section.

19 ~~SEC. 38.~~

20 *SEC. 29.* Section 46628 is added to the Revenue and Taxation
21 Code, to read:

22 46628. (a) (1) Beginning on January 1, 2007, the executive
23 director and chief counsel of the board, or their delegates, may
24 compromise any final fee liability where the reduction of fees is
25 seven thousand five hundred dollars (\$7,500) or less.

26 (2) Except as provided in paragraph (3), the board, upon
27 recommendation by its executive director and chief counsel,
28 jointly, may compromise a final fee liability involving a
29 reduction in fees in excess of seven thousand five hundred
30 dollars (\$7,500). Any recommendation for approval of an offer in
31 compromise that is not either approved or disapproved within 45
32 days of the submission of the recommendation shall be deemed
33 approved.

34 (3) The board, itself, may by resolution delegate to the
35 executive director and the chief counsel, jointly, the authority to
36 compromise a final fee liability in which the reduction of fees is
37 in excess of seven thousand five hundred dollars (\$7,500), but
38 less than ten thousand dollars (\$10,000).

39 (b) For purposes of this section, “a final fee liability” means
40 any final fee liability arising under Part 24 (commencing with

1 Section 46001), or related interest, additions to fees, penalties, or
2 other amounts assessed under this part.

3 (c) Offers in compromise shall be considered only for
4 liabilities that were generated from a business that has been
5 discontinued or transferred, where the feepayer making the offer
6 no longer has a controlling interest or association with the
7 transferred business or has a controlling interest or association
8 with a similar type of business as the transferred or discontinued
9 business.

10 (d) Offers in compromise shall not be considered where the
11 feepayer has been convicted of ~~fraud~~ *felony tax evasion* under
12 this part during the liability period.

13 (e) For amounts to be compromised under this section, the
14 following conditions shall exist:

15 (1) The feepayer shall establish that:

16 (A) The amount offered in payment is the most that can be
17 expected to be paid or collected from the feepayer's present
18 assets or income.

19 (B) The feepayer does not have reasonable prospects of
20 acquiring increased income or assets that would enable the
21 feepayer to satisfy a greater amount of the liability than the
22 amount offered, within a reasonable period of time.

23 (2) The board shall have determined that acceptance of the
24 compromise is in the best interest of the state.

25 (f) A determination by the board that it would not be in the
26 best interest of the state to accept an offer in compromise in
27 satisfaction of a final fee liability shall not be subject to
28 administrative appeal or judicial review.

29 (g) (1) Offers for liabilities with a fraud or evasion penalty
30 shall require a minimum offer of the unpaid fee and fraud or
31 evasion penalty.

32 (2) The minimum offer may be waived if it can be shown that
33 the feepayer making the offer was not the person responsible for
34 perpetrating the fraud or ~~evasion, including, but not limited to,~~
35 *evasion. This authorization to waive only applies to* partnership
36 accounts where the intent to commit fraud or evasion can be
37 clearly attributed to a partner of the feepayer.

38 (h) When an offer in compromise is either accepted or
39 rejected, or the terms and conditions of a compromise agreement
40 are fulfilled, the board shall notify the feepayer in writing. In the

1 event an offer is rejected, the amount posted will either be
2 applied to the liability or refunded, at the discretion of the
3 feepayer.

4 (i) When more than one feepayer is liable for the debt, such as
5 with spouses or partnerships or other business combinations,
6 including, but not limited to, feepayers who are liable through
7 dual determination or successor's liability, the acceptance of an
8 offer in compromise from one liable feepayer shall ~~not relieve~~
9 ~~the other feepayers from paying the entire liability. However, the~~
10 ~~amount of the liability shall be reduced by the amount of the~~
11 *reduce the amount of the liability of the other feepayers by the*
12 *amount of the accepted offer.*

13 (j) Whenever a compromise of fees or penalties or total fees
14 and penalties in excess of five hundred dollars (\$500) is
15 approved, there shall be placed on file for at least one year in the
16 office of the executive director of the board a public record with
17 respect to that compromise. The public record shall include all of
18 the following information:

19 (1) The name of the feepayer.

20 (2) The amount of unpaid fees and related penalties, additions
21 to fees, interest, or other amounts involved.

22 (3) The amount offered.

23 (4) A summary of the reason why the compromise is in the
24 best interest of the state.

25 The public record shall not include any information that relates
26 to any trade secrets, patent, process, style of work, apparatus,
27 business secret, or organizational structure, that if disclosed,
28 would adversely affect the feepayer or violate the confidentiality
29 provisions of Section 40175. No list shall be prepared and no
30 releases distributed by the board in connection with these
31 statements.

32 (k) Any compromise made under this section may be
33 rescinded, all compromised liabilities may be reestablished,
34 without regard to any statute of limitations that otherwise may be
35 applicable, and no portion of the amount offered in compromise
36 refunded, if either of the following occurs:

37 (1) The board determines that any person did any of the
38 following acts regarding the making of the offer:

39 (A) Concealed from the board any property belonging to the
40 estate of any feepayer or other person liable for the fee.

(B) Received, withheld, destroyed, mutilated, or falsified any book, document, or record or made any false statement, relating to the estate or financial condition of the feepayer or other person liable for the fee.

(2) The feepayer fails to comply with any of the terms and conditions relative to the offer.

(l) Any person who, in connection with any offer or compromise under this section, or offer of that compromise to enter into that agreement, willfully does either of the following shall be guilty of a felony and, upon conviction, shall be fined not more than fifty thousand dollars (\$50,000) or imprisoned not more than three years, or both, together with the costs of investigation and prosecution:

(1) Conceals from any officer or employee of this state any property belonging to the estate of a feepayer or other person liable in respect of the fee.

(2) Receives, withholds, destroys, mutilates, or falsifies any book, document, or record, or makes any false statement, relating to the estate or financial condition of the feepayer or other person liable in respect of the fee.

(m) For purposes of this section, “person” means the feepayer, any member of the feepayer’s family, any corporation, agent, fiduciary, or representative of, or any other individual or entity acting on behalf of, the feepayer, or any other corporation or entity owned or controlled by the feepayer, directly or indirectly, or that owns or controls the feepayer, directly or indirectly.

~~SEC. 39. Section 50112.7 of the Revenue and Taxation Code is amended to read:~~

~~50112.7. (a) Any person whose estimated fee liability under this part averages ten thousand dollars (\$10,000) or more per month, as determined by the board pursuant to methods of calculation prescribed by the board, shall remit amounts due by an electronic funds transfer under procedures prescribed by the board.~~

~~(b) Any person whose estimated fee liability under this part averages less than ten thousand dollars (\$10,000) per month may elect to remit amounts due by electronic funds transfer with the approval of the board.~~

~~(c) Any person remitting amounts due pursuant to subdivision (a) or (b) shall perform electronic funds transfer in compliance~~

1 with the due dates set forth in Article 1 (commencing with
2 Section 50109). Payment is deemed complete on the date the
3 electronic funds transfer is initiated, if settlement to the state's
4 demand account occurs on or before the banking day following
5 the date the transfer is initiated. If settlement to the state's
6 demand account does not occur on or before the banking day
7 following the date the transfer is initiated, payment is deemed to
8 occur on the date settlement occurs.

9 (d) Any person remitting fees by electronic funds transfer
10 shall, on or before the due date of the remittance, file a return for
11 the preceding reporting period in the form and manner prescribed
12 by the board. Any person who fails to timely file the required
13 return shall pay a penalty of 10 percent of the amount of fees,
14 with respect to the period for which the return is required.

15 (e) Any person required to remit fees pursuant to this article
16 who remits those fees by means other than appropriate electronic
17 funds transfer shall pay a penalty of 10 percent of the fees
18 incorrectly remitted.

19 (f) Any person who fails to pay any fee to the state or any
20 amount of fee required to be paid to the state, except amounts of
21 determinations made by the board under Article 2 (commencing
22 with Section 50113) within the time required shall pay a penalty
23 of 10 percent of the fee or amount of fee, in addition to the fee or
24 amount of fee, plus interest at the modified adjusted rate per
25 month, or fraction thereof, established pursuant to Section
26 6591.5, from the date on which the fee or the amount of fee
27 required to be paid became due and payable to the state until the
28 date of payment.

29 (g) In determining whether a person's estimated fee liability
30 averages ten thousand dollars (\$10,000) or more per month, the
31 board may consider returns filed pursuant to this part and any
32 other information in the board's possession.

33 (h) The penalties imposed by subdivisions (d), (e), and (f)
34 shall be limited to a maximum of 10 percent of the fees due for
35 any one return. Any person remitting fees by electronic funds
36 transfer shall be subject to the penalties under this section and not
37 Section 50112.

38 (i) The board shall promulgate regulations pursuant to Chapter
39 3.5 (commencing with Section 11340) of Part 1 of Division 3 of

1 ~~Title 2 of the Government Code for purposes of implementing~~
2 ~~this section.~~

3 ~~SEC. 40.~~

4 *SEC. 30.* Section 50140.2 is added to the Revenue and
5 Taxation Code, to read:

6 50140.2. Notwithstanding Section 50140, a refund of an
7 overpayment of any fee, penalty, or interest collected by the
8 board by means of levy, through the use of liens, or by other
9 enforcement procedures, shall be approved if a claim for a refund
10 is filed within three years of the date of an overpayment.

11 ~~SEC. 41.~~

12 *SEC. 31.* Section 50156.11 of the Revenue and Taxation
13 Code is amended to read:

14 50156.11. (a) It is the intent of the Legislature that the State
15 Board of Equalization, its staff, and the Attorney General pursue
16 settlements as authorized under this section with respect to fee
17 matters in dispute that are the subject of protests, appeals, or
18 refund claims, consistent with a reasonable evaluation of the
19 costs and risks associated with litigation of these matters.

20 (b) (1) Except as provided in paragraph (3) and subject to
21 paragraph (2), the executive director or chief counsel, if
22 authorized by the executive director, of the board may
23 recommend to the State Board of Equalization, itself, a
24 settlement of any fee matter in dispute.

25 (2) No recommendation of settlement shall be submitted to the
26 board, itself, unless and until that recommendation has been
27 submitted by the executive director or chief counsel to the
28 Attorney General. Within 30 days of receiving that
29 recommendation, the Attorney General shall review the
30 recommendation and advise, in writing, the executive director or
31 chief counsel of the board of his or her conclusions as to whether
32 the recommendation is reasonable from an overall perspective.
33 The executive director or chief counsel shall, with each
34 recommendation of settlement submitted to the board, itself, also
35 submit the Attorney General's written conclusions obtained
36 pursuant to this paragraph.

37 (3) A settlement of any civil fee matter in dispute involving a
38 reduction of fee or penalties in settlement, the total of which
39 reduction of fee and penalties in settlement does not exceed five
40 thousand dollars (\$5,000), may be approved by the executive

1 director and chief counsel, jointly. The executive director shall
2 notify the board, itself, of any settlement approved pursuant to
3 this paragraph.

4 (c) Whenever a reduction of fees, or penalties, or total fees and
5 penalties in settlement in excess of five hundred dollars (\$500) is
6 approved pursuant to this section, there shall be placed on file,
7 for at least one year, in the office of the executive director of the
8 board a public record with respect to that settlement. The public
9 record shall include all of the following information:

10 (1) The name or names of the feepayers who are parties to the
11 settlement.

12 (2) The total amount in dispute.

13 (3) The amount agreed to pursuant to the settlement.

14 (4) A summary of the reasons why the settlement is in the best
15 interests of the State of California.

16 (5) For any settlement approved by the board, itself, the
17 Attorney General's conclusion as to whether the recommendation
18 of settlement was reasonable from an overall perspective.

19 The public record shall not include any information that relates
20 to any trade secret, patent, process, style of work, apparatus,
21 business secret, or organizational structure that, if disclosed,
22 would adversely affect the feepayer or the national defense.

23 (d) The members of the State Board of Equalization shall not
24 participate in the settlement of fee matters pursuant to this
25 section, except as provided in subdivision (e).

26 (e) (1) Any recommendation for settlement shall be approved
27 or disapproved by the board, itself, within 45 days of the
28 submission of that recommendation to the board. Any
29 recommendation for settlement that is not either approved or
30 disapproved by the board, itself, within 45 days of the
31 submission of that recommendation shall be deemed approved.
32 Upon approval of a recommendation for settlement, the matter
33 shall be referred back to the executive director or chief counsel in
34 accordance with the decision of the board.

35 (2) Disapproval of a recommendation for settlement shall be
36 made only by a majority vote of the board. Where the board
37 disapproves a recommendation for settlement, the matter shall be
38 remanded to board staff for further negotiation, and may be
39 resubmitted to the board, in the same manner and subject to the

1 same requirements as the initial submission, at the discretion of
2 the executive director or chief counsel.

3 (f) All settlements entered into pursuant to this section shall be
4 final and nonappealable, except upon a showing of fraud or
5 misrepresentation with respect to a material fact.

6 (g) Any proceedings undertaken by the board itself pursuant to
7 a settlement as described in this section shall be conducted in a
8 closed session or sessions.

9 (h) This section shall apply only to fee matters in dispute on or
10 after the effective date of the act adding this subdivision.

11 (i) The Legislature finds that it is essential for fiscal purposes
12 that the settlement program authorized by this section be
13 expeditiously implemented. Accordingly, Chapter 3.5
14 (commencing with Section 11340) of Part 1 of Division 3 of Title
15 2 of the Government Code shall not apply to any determination,
16 rule, notice, or guideline established or issued by the board in
17 implementing and administering the settlement program
18 authorized by this section.

19 ~~SEC. 42.— Section 55050 of the Revenue and Taxation Code is~~
20 ~~amended to read:~~

21 ~~55050. (a) Any person whose estimated fee liability under~~
22 ~~this part averages ten thousand dollars (\$10,000) or more per~~
23 ~~month, as determined by the board pursuant to methods of~~
24 ~~calculation prescribed by the board, shall remit amounts due by~~
25 ~~an electronic funds transfer under procedures prescribed by the~~
26 ~~board.~~

27 ~~(b) Any person whose estimated fee liability under this part~~
28 ~~averages less than ten thousand dollars (\$10,000) per month may~~
29 ~~elect to remit amounts due by electronic funds transfer with the~~
30 ~~approval of the board.~~

31 ~~(c) Any person remitting amounts due pursuant to subdivision~~
32 ~~(a) or (b) shall perform electronic funds transfer in compliance~~
33 ~~with the due dates prescribed for the payment of the fee. Payment~~
34 ~~is deemed complete on the date the electronic funds transfer is~~
35 ~~initiated if settlement to the state's demand account occurs on or~~
36 ~~before the banking day following the date the transfer is initiated.~~
37 ~~If settlement to the state's demand account does not occur on or~~
38 ~~before the banking day following the date the transfer is initiated,~~
39 ~~payment is deemed to occur on the date settlement occurs.~~

~~(d) Any person remitting fees by electronic funds transfer shall, on or before the due date of the remittance, file a return for the preceding reporting period in the form and manner prescribed by the board. Any person who fails to timely file the required return shall pay a penalty of 10 percent of the amount of fees, exclusive of prepayments, with respect to the period for which the return is required.~~

~~(e) Any person required to remit fees pursuant to this article who remits those fees by means other than appropriate electronic funds transfer shall pay a penalty of 10 percent of the fees incorrectly remitted.~~

~~(f) Any person who fails to pay any fee to the state or any amount of fee required to be collected and paid to the state, except amounts of determinations made by the board under Article 2 (commencing with Section 55061) within the time required shall pay a penalty of 10 percent of the fee or amount of fee, in addition to the fee or amount of fee, plus interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date on which the fee or the amount of fee required to be collected became due and payable to the state until the date of payment.~~

~~(g) In determining whether a person's estimated fee liability averages ten thousand dollars (\$10,000) or more per month, the board may consider returns filed pursuant to this part and any other information in the board's possession.~~

~~(h) The penalties imposed by subdivisions (d), (e), and (f) shall be limited to a maximum of 10 percent of the fees due, exclusive of prepayments, for any one return. Any person remitting fees by electronic funds transfer shall be subject to the penalties under this section and not Section 55042.~~

~~(i) The board shall promulgate regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code for purposes of implementing this section.~~

~~SEC. 43.~~

SEC. 32. Section 55222.2 is added to the Revenue and Taxation Code, to read:

55222.2. Notwithstanding Section 55222, a refund of an overpayment of any fee, penalty, or interest collected by the board by means of levy, through the use of liens, or by other

1 enforcement procedures, shall be approved if a claim for a refund
2 is filed within three years of the date of an overpayment.

3 ~~SEC. 44.~~

4 *SEC. 33.* Section 55332 of the Revenue and Taxation Code is
5 amended to read:

6 55332. (a) It is the intent of the Legislature that the State
7 Board of Equalization, its staff, and the Attorney General pursue
8 settlements as authorized under this section with respect to fee
9 matters in dispute that are the subject of protests, appeals, or
10 refund claims, consistent with a reasonable evaluation of the
11 costs and risks associated with litigation of these matters.

12 (b) (1) Except as provided in paragraph (3) and subject to
13 paragraph (2), the executive director or chief counsel, if
14 authorized by the executive director, of the board may
15 recommend to the State Board of Equalization, itself, a
16 settlement of any fee matter in dispute.

17 (2) No recommendation of settlement shall be submitted to the
18 board, itself, unless and until that recommendation has been
19 submitted by the executive director or chief counsel to the
20 Attorney General. Within 30 days of receiving that
21 recommendation, the Attorney General shall review the
22 recommendation and advise, in writing, the executive director or
23 chief counsel of the board of his or her conclusions as to whether
24 the recommendation is reasonable from an overall perspective.
25 The executive director or chief counsel shall, with each
26 recommendation of settlement submitted to the board, itself, also
27 submit the Attorney General's written conclusions obtained
28 pursuant to this paragraph.

29 (3) A settlement of any civil fee matter in dispute involving a
30 reduction of fee or penalties in settlement, the total of which
31 reduction of fee and penalties in settlement does not exceed five
32 thousand dollars (\$5,000), may be approved by the executive
33 director and chief counsel, jointly. The executive director shall
34 notify the board, itself, of any settlement approved pursuant to
35 this paragraph.

36 (c) Whenever a reduction of fees, or penalties, or total fees and
37 penalties in settlement in excess of five hundred dollars (\$500) is
38 approved pursuant to this section, there shall be placed on file,
39 for at least one year, in the office of the executive director of the

1 board a public record with respect to that settlement. The public
2 record shall include all of the following information:

3 (1) The name or names of the feepayers who are parties to the
4 settlement.

5 (2) The total amount in dispute.

6 (3) The amount agreed to pursuant to the settlement.

7 (4) A summary of the reasons why the settlement is in the best
8 interests of the State of California.

9 (5) For any settlement approved by the board, itself, the
10 Attorney General's conclusion as to whether the recommendation
11 of settlement was reasonable from an overall perspective.

12 The public record shall not include any information that relates
13 to any trade secret, patent, process, style of work, apparatus,
14 business secret, or organizational structure that, if disclosed,
15 would adversely affect the feepayer or the national defense.

16 (d) The members of the State Board of Equalization shall not
17 participate in the settlement of fee matters pursuant to this
18 section, except as provided in subdivision (e).

19 (e) (1) Any recommendation for settlement shall be approved
20 or disapproved by the board, itself, within 45 days of the
21 submission of that recommendation to the board. Any
22 recommendation for settlement that is not either approved or
23 disapproved by the board, itself, within 45 days of the
24 submission of that recommendation shall be deemed approved.
25 Upon approval of a recommendation for settlement, the matter
26 shall be referred back to the executive director or chief counsel in
27 accordance with the decision of the board.

28 (2) Disapproval of a recommendation for settlement shall be
29 made only by a majority vote of the board. Where the board
30 disapproves a recommendation for settlement, the matter shall be
31 remanded to board staff for further negotiation, and may be
32 resubmitted to the board, in the same manner and subject to the
33 same requirements as the initial submission, at the discretion of
34 the executive director or chief counsel.

35 (f) All settlements entered into pursuant to this section shall be
36 final and nonappealable, except upon a showing of fraud or
37 misrepresentation with respect to a material fact.

38 (g) Any proceedings undertaken by the board itself pursuant to
39 a settlement as described in this section shall be conducted in a
40 closed session or sessions. Except as provided in subdivision (c),

1 any settlement considered or entered into pursuant to this section
2 shall constitute confidential information for purposes of Section
3 55381.

4 (h) This section shall apply only to fee matters in dispute on or
5 after the effective date of the act adding this subdivision.

6 (i) The Legislature finds that it is essential for fiscal purposes
7 that the settlement program authorized by this section be
8 expeditiously implemented. Accordingly, Chapter 3.5
9 (commencing with Section 11340) of Part 1 of Division 3 of Title
10 2 of the Government Code shall not apply to any determination,
11 rule, notice, or guideline established or issued by the board in
12 implementing and administering the settlement program
13 authorized by this section.

14 ~~SEC. 45.~~

15 *SEC. 34.* Section 55332.5 is added to the Revenue and
16 Taxation Code, to read:

17 55332.5. (a) (1) Beginning on January 1, 2007, the executive
18 director and chief counsel of the board, or their delegates, may
19 compromise any final fee liability where the reduction of fees is
20 seven thousand five hundred dollars (\$7,500) or less.

21 (2) Except as provided in paragraph (3), the board, upon
22 recommendation by its executive director and chief counsel,
23 jointly, may compromise a final fee liability involving a
24 reduction in fees in excess of seven thousand five hundred
25 dollars (\$7,500). Any recommendation for approval of an offer in
26 compromise that is not either approved or disapproved within 45
27 days of the submission of the recommendation shall be deemed
28 approved.

29 (3) The board, itself, may by resolution delegate to the
30 executive director and the chief counsel, jointly, the authority to
31 compromise a final fee liability in which the reduction of fees is
32 in excess of seven thousand five hundred dollars (\$7,500), but
33 less than ten thousand dollars (\$10,000).

34 (b) For purposes of this section, “a final fee liability” means
35 any final fee liability arising under Part 30 (commencing with
36 Section 55001), or related interest, additions to fees, penalties, or
37 other amounts assessed under this part.

38 (c) Offers in compromise shall be considered only for
39 liabilities that were generated from a business that has been
40 discontinued or transferred, where the feepayer making the offer

1 no longer has a controlling interest or association with the
2 transferred business or has a controlling interest or association
3 with a similar type of business as the transferred or discontinued
4 business.

5 (d) Offers in compromise shall not be considered where the
6 feepayer has been convicted of ~~fraud~~ *felony tax evasion* under
7 this part during the liability period.

8 (e) For amounts to be compromised under this section, the
9 following conditions shall exist:

10 (1) The feepayer shall establish that:

11 (A) The amount offered in payment is the most that can be
12 expected to be paid or collected from the feepayer's present
13 assets or income.

14 (B) The feepayer does not have reasonable prospects of
15 acquiring increased income or assets that would enable the
16 feepayer to satisfy a greater amount of the liability than the
17 amount offered, within a reasonable period of time.

18 (2) The board shall have determined that acceptance of the
19 compromise is in the best interest of the state.

20 (f) A determination by the board that it would not be in the
21 best interest of the state to accept an offer in compromise in
22 satisfaction of a final fee liability shall not be subject to
23 administrative appeal or judicial review.

24 (g) (1) Offers for liabilities with a fraud or evasion penalty
25 shall require a minimum offer of the unpaid fee and fraud or
26 evasion penalty.

27 (2) The minimum offer may be waived if it can be shown that
28 the feepayer making the offer was not the person responsible for
29 perpetrating the fraud or ~~evasion, including, but not limited to,~~
30 *evasion. This authorization to waive only applies to* partnership
31 accounts where the intent to commit fraud or evasion can be
32 clearly attributed to a partner of the feepayer.

33 (h) When an offer in compromise is either accepted or
34 rejected, or the terms and conditions of a compromise agreement
35 are fulfilled, the board shall notify the feepayer in writing. In the
36 event an offer is rejected, the amount posted will either be
37 applied to the liability or refunded, at the discretion of the
38 feepayer.

39 (i) When more than one feepayer is liable for the debt, such as
40 with spouses or partnerships or other business combinations,

1 including, but not limited to, feepayers who are liable through
2 dual determination or successor's liability, the acceptance of an
3 offer in compromise from one liable feepayer shall ~~not relieve~~
4 ~~the other feepayers from paying the entire liability. However, the~~
5 ~~amount of the liability shall be reduced by the amount of the~~
6 *reduce the amount of the liability of the other feepayers by the*
7 *amount of the accepted offer.*

8 (j) Whenever a compromise of fees or penalties or total fees
9 and penalties in excess of five hundred dollars (\$500) is
10 approved, there shall be placed on file for at least one year in the
11 office of the executive director of the board a public record with
12 respect to that compromise. The public record shall include all of
13 the following information:

14 (1) The name of the feepayer.

15 (2) The amount of unpaid fees and related penalties, additions
16 to fees, interest, or other amounts involved.

17 (3) The amount offered.

18 (4) A summary of the reason why the compromise is in the
19 best interest of the state.

20 The public record shall not include any information that relates
21 to any trade secrets, patent, process, style of work, apparatus,
22 business secret, or organizational structure, that if disclosed,
23 would adversely affect the feepayer or violate the confidentiality
24 provisions of Section 55381. No list shall be prepared and no
25 releases distributed by the board in connection with these
26 statements.

27 (k) Any compromise made under this section may be
28 rescinded, all compromised liabilities may be reestablished,
29 without regard to any statute of limitations that otherwise may be
30 applicable, and no portion of the amount offered in compromise
31 refunded, if either of the following occurs:

32 (1) The board determines that any person did any of the
33 following acts regarding the making of the offer:

34 (A) Concealed from the board any property belonging to the
35 estate of any feepayer or other person liable for the fee.

36 (B) Received, withheld, destroyed, mutilated, or falsified any
37 book, document, or record or made any false statement, relating
38 to the estate or financial condition of the feepayer or other person
39 liable for the fee.

(2) The feepayer fails to comply with any of the terms and conditions relative to the offer.

(l) Any person who, in connection with any offer or compromise under this section, or offer of that compromise to enter into that agreement, willfully does either of the following shall be guilty of a felony and, upon conviction, shall be fined not more than fifty thousand dollars (\$50,000) or imprisoned not more than three years, or both, together with the costs of investigation and prosecution:

(1) Conceals from any officer or employee of this state any property belonging to the estate of a feepayer or other person liable in respect of the fee.

(2) Receives, withholds, destroys, mutilates, or falsifies any book, document, or record, or makes any false statement, relating to the estate fee.

(m) For purposes of this section, “person” means the feepayer, any member of the feepayer’s family, any corporation, agent, fiduciary, or representative of, or any other individual or entity acting on behalf of, the feepayer, or any other corporation or entity owned or controlled by the feepayer, directly or indirectly, or that owns or controls the feepayer, directly or indirectly.

~~SEC. 46.~~

~~SEC. 35.~~ Section 60045 of the Revenue and Taxation Code is repealed.

~~SEC. 47.~~

~~SEC. 36.~~ Section 60046 of the Revenue and Taxation Code is repealed.

~~SEC. 48.~~

~~SEC. 37.~~ Section 60063 of the Revenue and Taxation Code is amended to read:

60063. (a) The board may accept from the person who receives diesel fuel removed at a refinery or terminal rack an amount equal to the tax due and required to be paid by the refiner or positionholder upon the removal of the diesel fuel from a refinery or terminal rack, as if the amount were payment of the tax by the refiner or positionholder under Section 60051 or 60052, as the case may be, if the Internal Revenue Service authorizes payment of federal fuel taxes by the receiving party under a two-party exchange agreement or similar arrangement.

(b) The refiner or positionholder shall remain primarily liable for payment of the tax imposed by Section 60051 or 60052 for diesel fuel removed at the refinery or terminal rack, as the case may be, plus any penalty or interest, until the amount is finally paid and credited to the account of the responsible refiner or positionholder; provided, however, that the board, at its discretion, may relieve the refiner or positionholder from primary liability for payment of tax imposed by ~~Section 30051~~ 60051 or 60052 and hold another person primarily liable for the tax if (i) the Internal Revenue Service authorizes payment of fuel taxes by the receiving party under a two-party exchange agreement, and (ii) under the Internal Revenue Service approach to a two-party exchange agreement, another person is primarily liable for payment of the tax, and (iii) the board elects to follow the Internal Revenue Service approach.

(c) The board may adopt those regulations as it deems appropriate to carry out this section.

~~SEC. 49.~~

SEC. 38. Section 60101 of the Revenue and Taxation Code is amended to read:

60101. (a) Diesel fuel that is required to be dyed satisfies the dyeing requirement of this part if it meets the dyeing requirements of the United States Environmental Protection Agency and the Internal Revenue Service, including, but not limited to, requirements respecting type, dosage, and timing.

(b) Marking shall meet the marking requirements of the Internal Revenue Service.

(c) No person shall operate or maintain a motor vehicle on any public highway in this state with dyed diesel fuel in the fuel supply tank. This subdivision does not apply to uses of dyed diesel fuel on the highway that are lawful under the Internal Revenue Code or regulations promulgated thereunder, if the person is registered as a qualified highway vehicle operator, exempt bus operator, or government entity.

~~SEC. 50.~~

SEC. 39. Section 60201.3 of the Revenue and Taxation Code is amended to read:

60201.3. (a) A supplier is relieved from liability for diesel fuel tax insofar as the sales of the diesel fuel are represented by accounts which have been found worthless and charged off for

1 income tax purposes. If the supplier has previously paid the
2 amount of the tax, he or she may, under the rules and regulations
3 prescribed by the board, take a credit in that amount. If those
4 accounts are thereafter in whole or in part collected by the
5 supplier, the gallons of diesel fuel represented by the amounts
6 collected shall be included in the first return filed after that
7 collection and the amount of the tax thereon shall be paid with
8 the return. The board may, at its option, require the supplier to
9 submit periodic reports listing accounts delinquent for a 90-day
10 period or more.

11 (b) Any customer of a supplier who has failed to pay for diesel
12 fuel purchased and for which the supplier has been allowed a
13 credit under subdivision (a) is liable to the state for the diesel fuel
14 tax as an unlicensed supplier and the tax, applicable penalties,
15 and interest become immediately due and payable under the
16 unlicensed persons provisions contained in Article 6
17 (commencing with Section 60360) of Chapter 6. The notice of
18 determination issued under Section 60361 shall be given to the
19 customer within three years of the last day of the calendar month
20 following the reporting period for which the supplier took a
21 credit for the tax previously paid on the customer's account or
22 within three years after the date a refund of the tax was paid.

23 ~~SEC. 51. Section 60250 of the Revenue and Taxation Code is~~
24 ~~amended to read:~~

25 ~~60250. (a) Any person whose estimated tax liability under~~
26 ~~this part averages ten thousand dollars (\$10,000) or more per~~
27 ~~month, as determined by the board pursuant to methods of~~
28 ~~calculation prescribed by the board, shall remit amounts due by~~
29 ~~an electronic funds transfer under procedures prescribed by the~~
30 ~~board.~~

31 ~~(b) Any person whose estimated tax liability under this part~~
32 ~~averages less than ten thousand dollars (\$10,000) per month may~~
33 ~~elect to remit amounts due by electronic funds transfer with the~~
34 ~~approval of the board.~~

35 ~~(c) Any person remitting amounts due pursuant to subdivision~~
36 ~~(a) or (b) shall perform electronic funds transfer in compliance~~
37 ~~with the due dates set forth in Article 1 (commencing with~~
38 ~~Section 60201). Payment is deemed complete on the date the~~
39 ~~electronic funds transfer is initiated if settlement to the state's~~
40 ~~demand account occurs on or before the banking day following~~

1 the date the transfer is initiated. If settlement to the state's
2 demand account does not occur on or before the banking day
3 following the date the transfer is initiated, payment is deemed to
4 occur on the date settlement occurs.

5 (d) Any person remitting taxes by electronic funds transfer
6 shall, on or before the due date of the remittance, file a return for
7 the preceding reporting period in the form and manner prescribed
8 by the board. Any person who fails to timely file the required
9 return shall pay a penalty of 10 percent of the amount of taxes
10 with respect to the period for which the return is required.

11 (e) Any person required to remit taxes pursuant to this article
12 who remits those taxes by means other than appropriate
13 electronic funds transfer shall pay a penalty of 10 percent of the
14 taxes incorrectly remitted.

15 (f) Any person who fails to pay any tax to the state or any
16 amount of tax required to be collected and paid to the state,
17 except amounts of determinations made by the board under
18 Article 2 (commencing with Section 60301) or Article 3
19 (commencing with Section 60310), within the time required shall
20 pay a penalty of 10 percent of the tax or amount of tax, in
21 addition to the tax or amount of tax, plus interest at the modified
22 adjusted rate per month, or fraction thereof, established pursuant
23 to Section 6591.5, from the date on which the tax became due
24 and payable to the state until the date of payment.

25 (g) In determining whether a person's estimated tax liability
26 averages ten thousand dollars (\$10,000) or more per month, the
27 board may consider tax returns filed pursuant to this part and any
28 other information in the board's possession.

29 (h) The penalties imposed by subdivisions (d), (e), and (f)
30 shall be limited to a maximum of 10 percent of the taxes due for
31 any one return. Any person remitting taxes by electronic funds
32 transfer shall be subject to the penalties under this section and not
33 Section 60207.

34 (i) The board shall promulgate regulations pursuant to Chapter
35 3.5 (commencing with Section 11340) of Part 1 of Division 3 of
36 Title 2 of the Government Code for purposes of implementing
37 this section.

38 SEC. 52:

39 SEC. 40. Section 60522.2 is added to the Revenue and
40 Taxation Code, to read:

1 60522.2. Notwithstanding Section 60522, a refund of an
2 overpayment of any tax, penalty, or interest collected by the
3 board by means of levy, through the use of liens, or by other
4 enforcement procedures, shall be approved if a claim for a refund
5 is filed within three years of the date of an overpayment.

6 ~~SEC. 53.~~

7 *SEC. 41.* Section 60604 of the Revenue and Taxation Code is
8 amended to read:

9 60604. Every interstate user, supplier, exempt bus operator,
10 government entity, ultimate vendor, qualified highway vehicle
11 operator, highway vehicle operator/fueler, train operator, pipeline
12 operator, vessel operator, and every person dealing in, removing,
13 transporting, or storing diesel fuel in this state shall keep those
14 records, receipts, invoices, and other pertinent papers with
15 respect thereto in that form as the board may require. Failure to
16 maintain records will constitute a misdemeanor punishable as
17 provided in Section 60706.

18 ~~SEC. 54.~~

19 *SEC. 42.* Section 60606 of the Revenue and Taxation Code is
20 amended to read:

21 60606. The board or its authorized representative may
22 examine the books, records, and equipment of any interstate user,
23 supplier, exempt bus operator, government entity, ultimate
24 vendor, qualified highway vehicle operator, highway vehicle
25 operator/fueler, train operator, pipeline operator, vessel operator,
26 or person dealing in, removing, transporting, or storing diesel
27 fuel and may investigate the character of the disposition that the
28 interstate user, supplier, exempt bus operator, government entity,
29 ultimate vendor, qualified highway vehicle operator, highway
30 vehicle operator/fueler, train operator, pipeline operator, vessel
31 operator, or person makes of the diesel fuel in order to ascertain
32 whether all taxes due under this part are being properly reported
33 and paid.

34 ~~SEC. 55.~~

35 *SEC. 43.* Section 60636 of the Revenue and Taxation Code is
36 amended to read:

37 60636. (a) It is the intent of the Legislature that the State
38 Board of Equalization, its staff, and the Attorney General pursue
39 settlements as authorized under this section with respect to civil
40 tax matters in dispute that are the subject of protests, appeals, or

1 refund claims, consistent with a reasonable evaluation of the
2 costs and risks associated with litigation of these matters.

3 (b) (1) Except as provided in paragraph (3) and subject to
4 paragraph (2), the executive director or chief counsel, if
5 authorized by the executive director, of the board may
6 recommend to the State Board of Equalization, itself, a
7 settlement of any civil tax matter in dispute.

8 (2) No recommendation of settlement shall be submitted to the
9 board, itself, unless and until that recommendation has been
10 submitted by the executive director or chief counsel to the
11 Attorney General. Within 30 days of receiving that
12 recommendation, the Attorney General shall review the
13 recommendation and advise, in writing, the executive director or
14 chief counsel of the board of his or her conclusions as to whether
15 the recommendation is reasonable from an overall perspective.
16 The executive director or chief counsel shall, with each
17 recommendation of settlement submitted to the board, itself, also
18 submit the Attorney General's written conclusions obtained
19 pursuant to this paragraph.

20 (3) A settlement of any civil tax matter in dispute involving a
21 reduction of tax or penalties in settlement, the total of which
22 reduction of tax and penalties in settlement does not exceed five
23 thousand dollars (\$5,000), may be approved by the executive
24 director and chief counsel, jointly. The executive director shall
25 notify the board, itself, of any settlement approved pursuant to
26 this paragraph.

27 (c) Whenever a reduction of tax, or penalties, or total tax and
28 penalties in settlement in excess of five hundred dollars (\$500) is
29 approved pursuant to this section, there shall be placed on file,
30 for at least one year, in the office of the executive director of the
31 board a public record with respect to that settlement. The public
32 record shall include all of the following information:

33 (1) The name or names of the taxpayers who are parties to the
34 settlement.

35 (2) The total amount in dispute.

36 (3) The amount agreed to pursuant to the settlement.

37 (4) A summary of the reasons why the settlement is in the best
38 interests of the State of California.

1 (5) For any settlement approved by the board, itself, the
2 Attorney General's conclusion as to whether the recommendation
3 of settlement was reasonable from an overall perspective.

4 The public record shall not include any information that relates
5 to any trade secret, patent, process, style of work, apparatus,
6 business secret, or organizational structure that, if disclosed,
7 would adversely affect the taxpayer or the national defense.

8 (d) The members of the State Board of Equalization shall not
9 participate in the settlement of tax matters pursuant to this
10 section, except as provided in subdivision (e).

11 (e) (1) Any recommendation for settlement shall be approved
12 or disapproved by the board, itself, within 45 days of the
13 submission of that recommendation to the board. Any
14 recommendation for settlement that is not either approved or
15 disapproved by the board, itself, within 45 days of the
16 submission of that recommendation shall be deemed approved.
17 Upon approval of a recommendation for settlement, the matter
18 shall be referred back to the executive director or chief counsel in
19 accordance with the decision of the board.

20 (2) Disapproval of a recommendation for settlement shall be
21 made only by a majority vote of the board. Where the board
22 disapproves a recommendation for settlement, the matter shall be
23 remanded to board staff for further negotiation, and may be
24 resubmitted to the board, in the same manner and subject to the
25 same requirements as the initial submission, at the discretion of
26 the executive director or chief counsel.

27 (f) All settlements entered into pursuant to this section shall be
28 final and nonappealable, except upon a showing of fraud or
29 misrepresentation with respect to a material fact.

30 (g) Any proceedings undertaken by the board itself pursuant to
31 a settlement as described in this section shall be conducted in a
32 closed session or sessions. Except as provided in subdivision (c),
33 any settlement considered or entered into pursuant to this section
34 shall constitute confidential tax information for purposes of
35 Section 60609.

36 (h) This section shall apply only to civil tax matters in dispute
37 on or after the effective date of the act adding this subdivision.

38 (i) The Legislature finds that it is essential for fiscal purposes
39 that the settlement program authorized by this section be
40 expeditiously implemented. Accordingly, Chapter 3.5

(commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any determination, rule, notice, or guideline established or issued by the board in implementing and administering the settlement program authorized by this section.

~~SEC. 56.~~

SEC. 44. Section 60637 is added to the Revenue and Taxation Code, to read:

60637. (a) (1) Beginning on January 1, 2007, the executive director and chief counsel of the board, or their delegates, may compromise any final tax liability where the reduction of tax is seven thousand five hundred dollars (\$7,500) or less.

(2) Except as provided in paragraph (3), the board, upon recommendation by its executive director and chief counsel, jointly, may compromise a final tax liability involving a reduction in tax in excess of seven thousand five hundred dollars (\$7,500). Any recommendation for approval of an offer in compromise that is not either approved or disapproved within 45 days of the submission of the recommendation shall be deemed approved.

(3) The board, itself, may by resolution delegate to the executive director and the chief counsel, jointly, the authority to compromise a final tax liability in which the reduction of tax is in excess of seven thousand five hundred dollars (\$7,500), but less than ten thousand dollars (\$10,000).

(b) For purposes of this section, “a final tax liability” means any final tax liability arising under Part 31 (commencing with Section 60001), or related interest, additions to tax, penalties, or other amounts assessed under this part.

(c) Offers in compromise shall be considered only for liabilities that were generated from a business that has been discontinued or transferred, where the taxpayer making the offer no longer has a controlling interest or association with the transferred business or has a controlling interest or association with a similar type of business as the transferred or discontinued business.

(d) Offers in compromise shall not be considered where the taxpayer has been convicted of ~~fraud~~ *felony tax evasion* under this part during the liability period.

(e) For amounts to be compromised under this section, the following conditions shall exist:

(1) The taxpayer shall establish that:

(A) The amount offered in payment is the most that can be expected to be paid or collected from the taxpayer's present assets or income.

(B) The taxpayer does not have reasonable prospects of acquiring increased income or assets that would enable the taxpayer to satisfy a greater amount of the liability than the amount offered, within a reasonable period of time.

(2) The board shall have determined that acceptance of the compromise is in the best interest of the state.

(f) A determination by the board that it would not be in the best interest of the state to accept an offer in compromise in satisfaction of a final tax liability shall not be subject to administrative appeal or judicial review.

(g) (1) Offers for liabilities with a fraud or evasion penalty shall require a minimum offer of the unpaid tax and fraud or evasion penalty.

(2) The minimum offer may be waived if it can be shown that the taxpayer making the offer was not the person responsible for perpetrating the fraud or evasion, ~~including, but not limited to, evasion. This authorization to waive only applies to~~ partnership accounts where the intent to commit fraud or evasion can be clearly attributed to a partner of the taxpayer.

(h) When an offer in compromise is either accepted or rejected, or the terms and conditions of a compromise agreement are fulfilled, the board shall notify the taxpayer in writing. In the event an offer is rejected, the amount posted will either be applied to the liability or refunded, at the discretion of the taxpayer.

(i) When more than one taxpayer is liable for the debt, such as with spouses or partnerships or other business combinations, including, but not limited to, taxpayers who are liable through dual determination or successor's liability, the acceptance of an offer in compromise from one liable taxpayer shall ~~not relieve the other taxpayers from paying the entire liability. However, the amount of the liability shall be reduced by the amount of the~~ *reduce the amount of the liability of the other taxpayers by the amount of the* accepted offer.

1 (j) Whenever a compromise of tax or penalties or total tax and
2 penalties in excess of five hundred dollars (\$500) is approved,
3 there shall be placed on file for at least one year in the office of
4 the executive director of the board a public record with respect to
5 that compromise. The public record shall include all of the
6 following information:

7 (1) The name of the taxpayer.

8 (2) The amount of unpaid tax and related penalties, additions
9 to tax, interest, or other amounts involved.

10 (3) The amount offered.

11 (4) A summary of the reason why the compromise is in the
12 best interest of the state.

13 The public record shall not include any information that relates
14 to any trade secrets, patent, process, style of work, apparatus,
15 business secret, or organizational structure, that if disclosed,
16 would adversely affect the taxpayer or violate the confidentiality
17 provisions of Section 60609. No list shall be prepared and no
18 releases distributed by the board in connection with these
19 statements.

20 (k) Any compromise made under this section may be
21 rescinded, all compromised liabilities may be reestablished,
22 without regard to any statute of limitations that otherwise may be
23 applicable, and no portion of the amount offered in compromise
24 refunded, if either of the following occurs:

25 (1) The board determines that any person did any of the
26 following acts regarding the making of the offer:

27 (A) Concealed from the board any property belonging to the
28 estate of any taxpayer or other person liable for the tax.

29 (B) Received, withheld, destroyed, mutilated, or falsified any
30 book, document, or record or made any false statement, relating
31 to the estate or financial condition of the taxpayer or other person
32 liable for the tax.

33 (2) The taxpayer fails to comply with any of the terms and
34 conditions relative to the offer.

35 (l) Any person who, in connection with any offer or
36 compromise under this section, or offer of that compromise to
37 enter into that agreement, willfully does either of the following
38 shall be guilty of a felony and, upon conviction, shall be fined
39 not more than fifty thousand dollars (\$50,000) or imprisoned not

1 more than three years, or both, together with the costs of
2 investigation and prosecution:

3 (1) Conceals from any officer or employee of this state any
4 property belonging to the estate of a taxpayer or other person
5 liable in respect of the tax.

6 (2) Receives, withholds, destroys, mutilates, or falsifies any
7 book, document, or record, or makes any false statement, relating
8 to the estate or financial condition of the taxpayer or other person
9 liable in respect of the tax.

10 (m) For purposes of this section, “person” means the taxpayer,
11 any member of the taxpayer’s family, any corporation, agent,
12 fiduciary, or representative of, or any other individual or entity
13 acting on behalf of, the taxpayer, or any other corporation or
14 entity owned or controlled by the taxpayer, directly or indirectly,
15 or that owns or controls the taxpayer, directly or indirectly.

16 ~~SEC. 57.~~

17 *SEC. 45.* No reimbursement is required by this act pursuant to
18 Section 6 of Article XIII B of the California Constitution because
19 the only costs that may be incurred by a local agency or school
20 district will be incurred because this act creates a new crime or
21 infraction, eliminates a crime or infraction, or changes the
22 penalty for a crime or infraction, within the meaning of Section
23 17556 of the Government Code, or changes the definition of a
24 crime within the meaning of Section 6 of Article XIII B of the
25 California Constitution.